

AN UNSPEAKABLE CRIME

THE PROSECUTION
AND PERSECUTION
OF LEO FRANK

ELAINE
MARIE
ALPHIN



CAROLRHODA BOOKS
MINNEAPOLIS / NEW YORK

FOR ART,

*who cannot witness
injustice without speaking
up, and who will never
endure the companionship
of an accusing conscience*

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“DIMPLES IN HER CHEEKS”

MARY PHAGAN

Thirteen-year-old Mary Phagan lived in the poor section of Atlanta, Georgia, but she dressed up like a high-society girl on the morning of Saturday, April 26, 1913, Confederate Memorial Day. Even though the War Between the States had been fought thirty-five years before her birth, Mary was excited to celebrate the event. There would be a parade and fireworks, and rumor had it that the widow of the great Confederate general Stonewall Jackson would actually attend!

After doing her morning chores and eating a breakfast of leftover cabbage and bread, Mary put on a pretty store-bought violet dress that accentuated her already well-developed figure. This was a holiday—a day when a little innocent flirting with boys would be fun. She carefully fixed a pair of bows in her thick auburn hair and then topped off the outfit with a blue straw hat that brought out the blue in her bright eyes. Her mother stood on the front porch watching Mary go and noticed her daughter’s excitement: “She had dimples in her cheeks.”

Clutching her silver mesh purse and a black parasol, Mary hurried through misty rain to catch the streetcar at 11:45. Sixteen-year-old Helen Ferguson remembered waving at Mary as Mary rode toward town. And George Epps, a fifteen-year-old newsboy, said he’d talked to her on the streetcar about watching the parade together.

But Mary had to make one stop before she could celebrate: she had to pick up her pay. Mary worked at the National Pencil Company with more than a hundred other teenage girls. Because of a supply



A photograph of Mary Phagan taken a short time before her death.



A scene from a Confederate Memorial Day parade in Atlanta, Georgia. Mary Phagan had planned to attend the parade on the day of her murder.

shortage of metal used to make pencil caps, she had only worked two shifts during the past week, but Mary wanted the \$1.20 she had earned. Around noon that Saturday, she crossed beneath the granite facade of the National Pencil Company building to enter the factory.

Mary Phagan never left the building alive.
And she was not the only person to die.

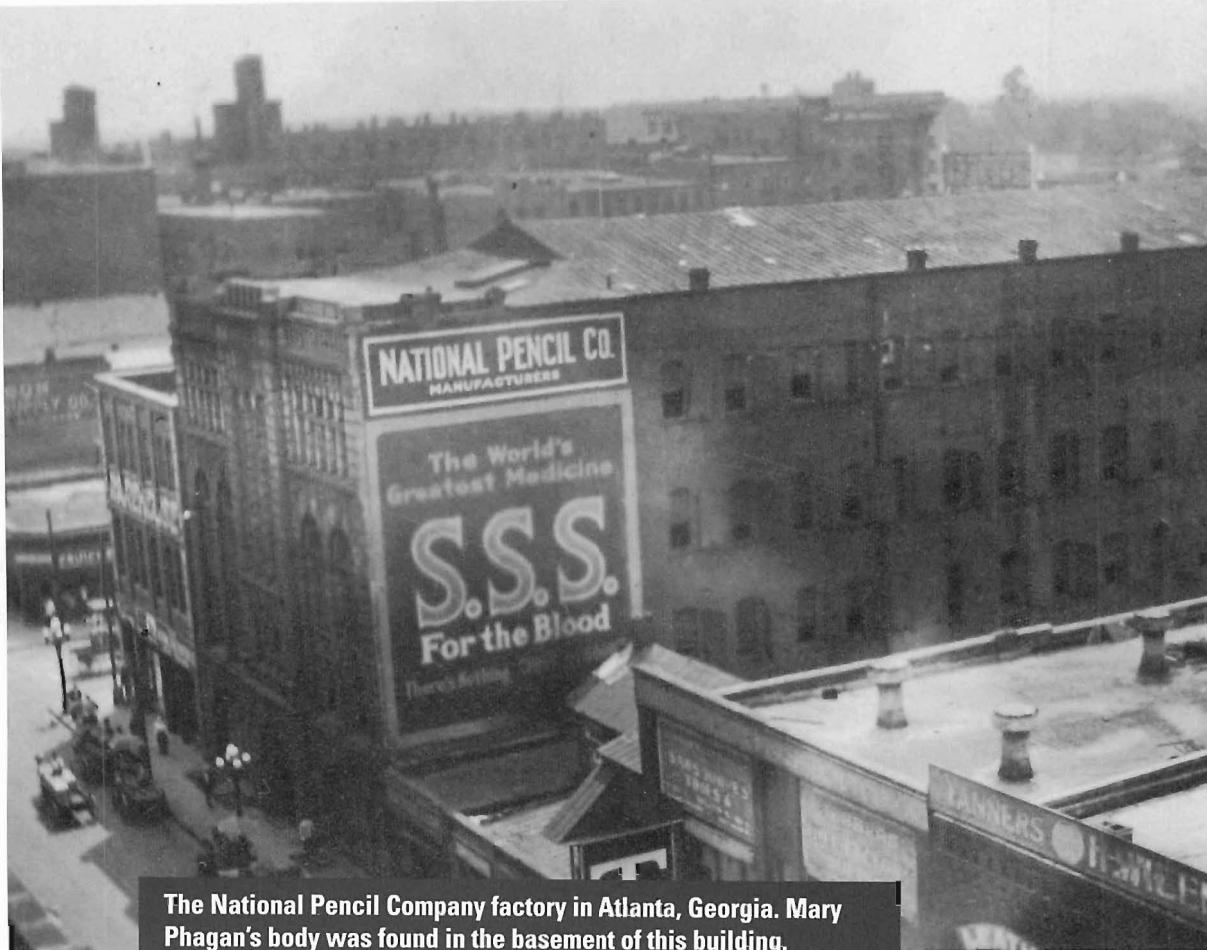
“THE MURDER OF MARY PHAGAN MUST BE PAID FOR IN BLOOD”

DISCOVERING THE BODY

Seventeen-year-old Grace Hicks worked at the National Pencil Company. She'd enjoyed herself at Saturday's parade and was surprised when her policeman brother-in-law, W. W. "Boots" Rogers, telephoned her early Sunday morning. He told her that the police had found a body in the factory basement, and it was in such terrible condition that no one could identify it. Perhaps Grace might recognize the girl.

Boots Rogers picked up Grace around 4:30 A.M. He drove back to the factory and led Grace through the trapdoor to the basement, where she identified the body as Mary Phagan, who worked with her in the metal department.

Shocked at the sight, Grace later said that Mary "was bruised, in the face somewhere, and one of her teeth was knocked out." Grace thought Mary "looked like she had been hit with something right there," pointing at her own face. "It was bruised, and a hole in her head, here. She had shavings all in her hair." She said Mary's face "was mighty near black" with some sort of dirt or cinders. Grace couldn't bear to look any longer. "It scared me."



The National Pencil Company factory in Atlanta, Georgia. Mary Phagan's body was found in the basement of this building.

The police wanted to notify Mary's family. Grace didn't know how to contact them, but she thought Helen Ferguson, another girl who worked at the factory, might know. When they called Helen from the factory office, she said that Mary's family was too poor to afford a telephone. She volunteered to tell her friend's mother and stepfather in person.

The news would not come as a complete surprise, as Mary's parents had waited up for her all night.

After Mary's father had died in Marietta, where Mary had been born, her mother married John Coleman and they raised Mary in Atlanta. Frannie Coleman had been so worried when Mary hadn't come home Saturday night that she'd sent her husband to town to look for her, thinking that Mary might have gone to the movies. John Coleman searched for nearly three hours. Then he came home and started knocking on neighbors' doors before using a friend's phone to call police after midnight.

Around 5:30 A.M., John and Frannie Coleman learned what had happened to Mary when Helen knocked on their door. Mary's mother collapsed in shock at the description of her daughter's death.

At least she found out before the morning edition of the *Atlanta Constitution* splashed the news of Mary's murder across its front page. Reporter Britt Craig had been in the police station when the telephone rang at 3:30 Sunday morning. "A white woman has been killed up here," said Newt Lee, the National Pencil Company's elderly, African American night watchman.

Britt followed the police to the factory and climbed through the trapdoor into the basement, stumbling through the smoky darkness behind the officers. "Look out, white folks," warned Newt Lee, "you'll step on her."

Neither Britt nor the policemen were surprised to hear Newt Lee call them "white folks." In 1913 Georgia, this form of address would have been considered a mark of respect from a black man who knew his place: below the whites who were in charge. The men stopped and shone their flashlights where Newt pointed. Britt could see a girl lying on the rubbish-strewn earthen floor, partially hidden beside a storage shed.

The officers gently turned the body over and were shocked to see a cord cutting deeply into her throat. Her swollen tongue bulged out from a mouth choked with cinders and sawdust and stained with blood. One shoulder had been bitten. Her dress was pushed up above her knees, and the men saw blood that indicated the girl might have been "criminally assaulted," or "outraged"—1913 euphemisms for rape.

Britt was as angry as the officers that a young girl in a party dress lay dead and violated in the dirt of the factory basement. To these men, Mary Phagan was a child who should have been home with her family instead of having to work in a factory—especially one run by a northern businessman, as the National Pencil Company was. Britt took notes as the officers searched the basement.

The men found a sliding wooden door that led to an alley. The door appeared to have been opened recently and then closed again. They also found one of Mary's shoes and a bloody handkerchief. As they raked through the sawdust and litter around the girl, they

found a note, scribbled in pencil on a sheet of white lined paper that matched a company notepad that lay nearby. One officer read it aloud:

*he said he wood love me land down play like the night
witch did it but that long tall black negro did boy his slef*

At that, Newt Lee muttered something. The other men thought he said, "White folks, that's me."

Then the police found a second note beside Mary's head. This one was written on a National Pencil Company order sheet:

*mam that negro hire down here did this i went to make
water and he push me down that hole a long tall negro
black that hoo it wase long sleam tall negro i wright
while play with me*

These notes appeared to have been written very recently and could have been interpreted in two different ways. They might have been written by Mary just before she died, in a last-minute effort to identify her killer. Or they might have been written by the killer, to throw suspicion away from himself and onto someone else. Police records don't indicate exactly what the officers on the scene thought about the notes, but their immediate reaction was to turn on Newt Lee in fury. "You did this," said the sergeant, "or you know who did it."

The night watchman began to shake. He insisted he hadn't done anything. But he was tall and had very dark skin, so to the officers, he looked like the man described in the notes. They also remembered his reaction to the first note. Newt Lee looked like the obvious suspect, and they immediately took him into custody. In 1913 the Atlanta police force was entirely white and, as reporter Harold Ross would later write, "The murder of Mary Phagan was the most brutal crime in the annals of the South. After the unfolding of the details the police did what they always do in Georgia—arrested a Negro."

After the officers on the scene found the notes, Detectives John Starnes and John Black arrived to continue the investigation. While

Atlanta Engr. Co.

37 & 39 SOUTH FORSYTH ST.

ATLANTA, GA.

190

PUT THIS ORDER NUMBER ON YOUR BILL.

Bell Phone Main 171.

Order No. 1518

The two notes discovered near Mary Phagan's body. The top note reads: "mam that negro hire down here did this i went to make water and he push me down that hole a long tall negro black that hoo it wase long steam tall negro i wright while play with me." The bottom note reads: "he said he wood love me land down play like the night witch did it but that long tall black negro did boy his slef." The meaning and authenticity of these notes was important to the case.

mam that negro

fire down here did

this i went to make
water and he push me
down that hole
a long tall negro did
that hoo it wase
long steam tall negro
i wright while play with

he said he wood love me
land down play like the
night witch did it
but that long tall black
negro did boy his slef

Britt Craig wrote his news story for the *Atlanta Constitution* and Helen Ferguson went to break the news to Mary's parents. Detective Starnes searched the crime scene. He found Mary's hat in the basement trash pile. He also studied the sliding wooden door more carefully and saw bloody handprints all over it. A metal pipe leaned against the wall nearby, and Starnes thought it might have been used to force the door open. There was no sign of Mary's purse.

Meanwhile, Detective Black was following a hunch. The detective had already provided evidence that had hung several criminals, and he wanted to be the one to find this girl's murderer. He was not satisfied with the idea of the old black man as the killer. As reporter Ross explained, Black and other members of the police realized something "which determined their whole future course of action: The murder of Mary Phagan must be paid for with blood. And a Negro's blood would not suffice."

But if Newt Lee was not to be charged with the crime, who should be?

Something Lee said had bothered Detective Black. Lee claimed that he'd tried to call the factory superintendent, Leo Frank, after he'd found the body. When he got no answer, he called the police. The night watchman might be lying, of course, but if he was telling the truth, why hadn't Leo Frank answered his phone in the middle of the night?

Even more troubling, the police had tried to call Leo Frank after arresting Newt Lee, and there was still no answer. They'd called and awakened other officials of the National Pencil Company with no trouble. Detective Black suspected that Leo Frank's refusal to answer his phone was important to the case.

“HOARSE AND TREMBLING AND NERVOUS AND EXCITED”

CONFUSION

When the telephone rang at 7:00 Sunday morning, twenty-nine-year-old Leo Frank felt a trace of unease. He had dreamed the telephone had rung in the middle of the night, and now its ringing came far too early for a social call. He lifted the receiver reluctantly.

“Is this Mr. Frank, superintendent of the National Pencil Factory?” It was Detective Starnes.

When Leo Frank answered yes, the detective told him he had to come to the factory immediately. Leo objected, saying he hadn’t had his breakfast yet, but Starnes insisted he would send a patrol car.

The car arrived quickly, and Leo’s wife, Lucille, invited the policemen to enter the home she and Leo shared with her parents. Leo came downstairs, only partially dressed. He questioned Detective Black and Boots Rogers with nervous distress, asking what had happened at the factory and whether the night watchman had reported anything.

Detective Black interrupted him. “Mr. Frank, you had better get your clothes on and let us go to the factory and see what has happened.”



Leo Frank in 1915, two years after the death of Mary Phagan.

To the detective, Leo's behavior seemed suspicious as he struggled with his tie. "His voice was hoarse and trembling and nervous and excited," Black recalled. Boots Rogers also thought Leo looked nervous, and his questions were jumpy. But the police officers weren't particularly reassuring. Leo later remembered, "I asked them what the trouble was and the man who I afterwards found out was Detective Black hung his head and didn't say anything."

A four-person conversation that was part of a police investigation should have been simple to document. But the confusion that would mar every step of the attempts to find out what had happened to Mary Phagan began that morning with this initial conversation between the police officers and the Franks. Leo, Lucille, and Boots Rogers recalled that Leo's wife offered everyone coffee, perhaps hoping that southern hospitality would calm the tension. But Detective Black remembered that Leo suggested the coffee. To the detective, it sounded as if the superintendent wanted to delay going to the factory.

Leo recalled that the police asked him, in front of his wife, if he knew Mary Phagan. He told them he didn't. Then they asked, "Didn't a little girl with long hair hanging down her back come up to your office yesterday sometime for her money?" Leo agreed that a girl had indeed come to his office for her pay but said he didn't know her name was Mary Phagan. He had issued the \$1.20 she had earned based on her employee number, not her name.

Leo finished dressing and left with the officers, without any breakfast or coffee. All three men agreed that they drove to the mortuary to view the body. Leo recalled looking closely at the girl and identifying her, but both Black and Rogers remembered the superintendent hanging back, then turning away nervously before they left to go to the factory.

Detective Black observed everything Leo did with a suspicious eye. Trying to answer police questions, the superintendent fumbled through pay records to confirm that Mary Phagan was the girl he had paid on Saturday. When asked to take the group down to the basement, Leo asked again for coffee before struggling with the power switch and the cables of the manual elevator. In the end, an



The police station in Atlanta, Georgia, as it was in 1913 at the time of the murder of Mary Phagan. Leo Frank was first questioned at this station.

employee had to work the elevator. Black saw the superintendent's nervousness and his requests for coffee as attempts to delay the moment when he would have to look at the scene of the crime. Once they reached the basement, Black thought it was significant that Leo paid little attention to the sawdust and cinders where police told him the body had lain but was distressed by the forced door with the bloody handprints.

Then they all drove to the police station house, where officers wanted Leo to examine the two notes found beside Mary's body. Despite the mild weather, Leo shivered uncontrollably as he sat in the front seat of the police car, adding to Detective Black's suspicion.

Leo felt he was only reacting naturally to police suspicion and a horrifying murder. Later, he would say,

Imagine, awakened out of my sound sleep, and a run down in the cool of the morning in an automobile driven at top speed, without any food or breakfast, rushing into a dark passageway, coming into a darkened room, and then suddenly an electric light flashed on, and to see the sight that was presented by that poor little child; why, it was a sight that was enough to drive a man to distraction. Of course I was nervous; any man would be nervous if he was a man.

Detective Black felt no sympathy for Leo Frank's nervousness. He knew they needed to arrest a better suspect than Newt Lee quickly, before people criticized a police force that couldn't even find the villain who had attacked and murdered an innocent girl.

As Atlanta's population had gone up, crime had increased. Unable to keep pace, the police force had gotten a reputation for failing to solve crimes. At times they tried to improve their success rate by resorting to brutality to get confessions when solid investigation didn't bring results.

Unfortunately, the police got off to a poor start on this murder case by breaking the chain of evidence from the factory. When Leo arrived at the police station with the officers, there was no sign of the

two notes they wanted him to see. The police would later discover that reporter Harold Ross of the *Atlanta Journal* had removed them to use in his paper, trying to make up for missing Britt Craig's scoop in the *Atlanta Constitution*. But in front of Leo, the police acted untroubled by this disappearance, even though the notes had not yet been examined by any expert or even dusted for fingerprints. Chief of Detectives Newport Lanford spoke with Leo briefly and then let him go and turned back to other leads.

While officers interrogated Newt Lee, taking him back and forth between the station house and the factory basement, other detectives followed up a report from Edgar Sentell, a twenty-one-year-old grocery clerk who knew Mary Phagan. Sentell had read Britt Craig's story in the *Constitution*, and told police that he'd seen Mary around 12:30 Saturday night with twenty-four-year-old Arthur Mullinax, a streetcar conductor. That led some officers to a new theory. Perhaps the African American watchman had committed the murder, but not alone. Perhaps he had been paid to do it by a white man.

When police questioned Mullinax, he confessed that he knew Mary and greatly admired her. They had both been in a church play the previous Christmas. Mary had been the star, and Mullinax admitted, "I couldn't keep my eyes off her." With no more substantial evidence than that, police arrested Arthur Mullinax on suspicion of murder. Another questionable lead would prompt them to also arrest James Gant, a disgruntled former employee of the factory who had come by that Saturday claiming to want some shoes he'd left behind.

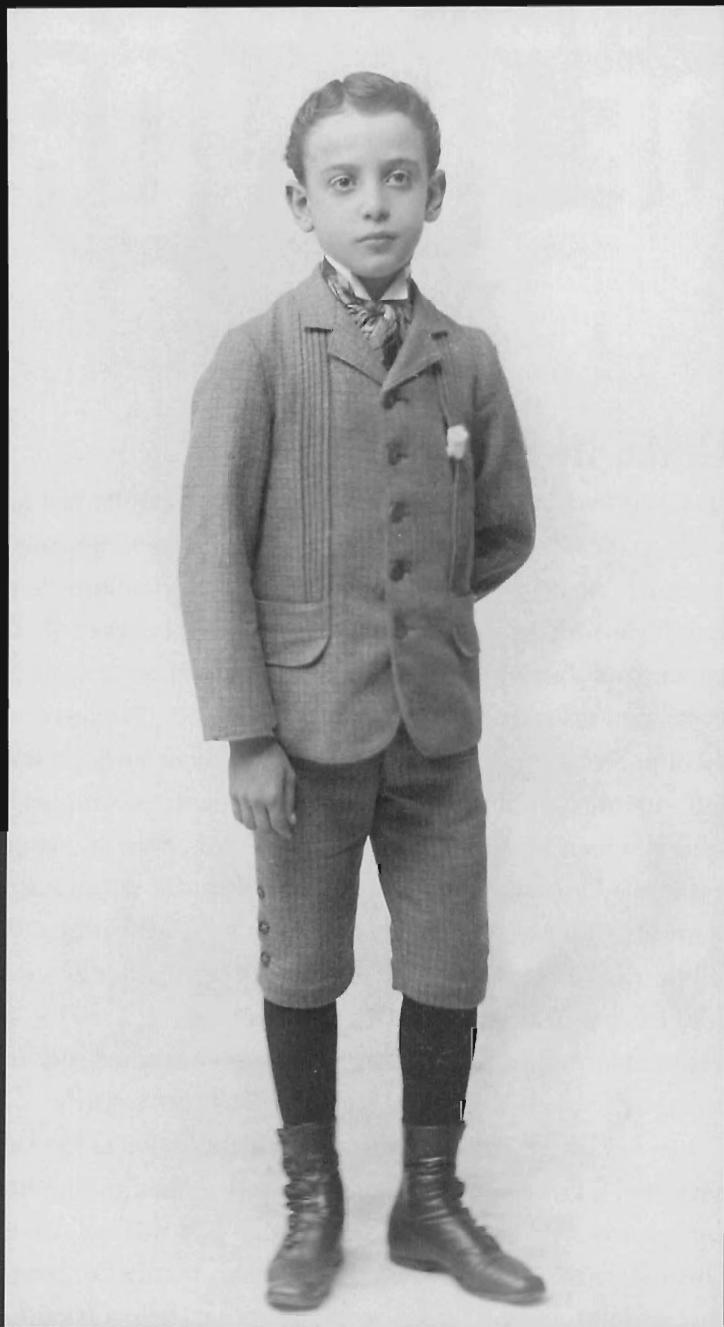
But Detective Black wasn't convinced that these new leads were important. That morning he'd observed a nervous, excited man who seemed reluctant to see either the basement site where Mary had been found or the dead girl's body itself. Detective Black needed to know more about the factory superintendent. Who was this Leo Frank?

“THE SOUL OF HONOR”

A YANKEE IN ATLANTA

Leo Frank had lived in Atlanta for nearly five years, but he still felt very much an outsider in the South. Although he was technically a southerner, having been born in Texas, Leo's parents had moved to Brooklyn, New York, in the summer of 1884 when he was only three months old. Rudolph and Rachel Frank had raised Leo as most New York Jewish parents raised their children at the time. He played with friends in the Brooklyn streets, went to the seaside in summer with his family, attended public schools, and played basketball on his high school team (which was undefeated his senior year, even in a game against the Yale University varsity team). He also read voraciously, and his imagination was so fired by the books he read that he named his small fleet of toy sailboats after the characters in James Fenimore Cooper's Leatherstocking Tales series of novels.

After graduating from the Pratt Institute, Leo studied mechanical engineering at Cornell University, where he was active on the debate team and made close friends who called him Max. He had also discovered a fascination with photography and enjoyed taking landscape photos. Morris Clurman wrote that Leo was well thought of “by his fellow students who loved him for his manly qualities, his warm-heartedness and his readiness at all times to help a friend. He was the soul of honor.” William Lynn Ransom recalled, “He always impressed me as a quiet, sincere, dependable, substantial and rather matter of fact sort of a fellow with rather emphatic convictions and an absolute loyalty to them and to sound standards of life.”



Leo Frank, age 9.

Leo worked as an engineer for B. F. Sturtevant Company in Hyde Park, Massachusetts, after he graduated from Cornell. He missed New York, however, and returned there to work for the National Meter Company. By this time, Rudolph Frank had been forced to retire after a railway accident, and Leo's parents and sister, Marian, were living on the interest from the injury settlement. In 1907 Moses Frank (Leo's uncle and a southerner who had fought for the Confederacy in the Civil War) suggested a way Leo could help the family. Uncle Moses had invested in the National Pencil Company in Atlanta. His engineer nephew, who had a keen understanding of production machinery, looked like just the person to help improve the company.

In preparation for his new job, Leo went to Germany to study pencil manufacturing at Eberhard Faber. Then he moved to Atlanta in 1908 to apply the scientific production methods he had observed abroad. But his new home city was very different from the society he had experienced in New York, Massachusetts, or even Germany. Many southerners lived as much in the past as the present. Although the Civil War had been over for almost fifty years, people kept its memory alive, calling it the War Between the States (stressing their belief in the right of individual states to secede), the War of Northern Aggression or, simply, the Recent Unpleasantness. People who had lived through the war and their descendants honored the soldiers who had fought in it. Celebrations like Confederate Memorial Day mattered equally to older people who had grown up before the war and to young people who had never known the Old South, like Mary Phagan and the other teenagers who worked in the National Pencil Company.

One reason the "unpleasantness" seemed so recent was because the U.S. government's process of bringing the Confederate states back into the Union during Reconstruction felt like an extension of the war to most southerners. During the war, Union soldiers from the North commanded by General William T. Sherman had swept across Georgia to the sea, burning over 80 percent of Atlanta to the ground in their wake. After the peace, northern officials had swept into southern states, determined to suppress not only slavery, but any signs of rebellious thinking. These Yankees levied heavy taxes upon

owners of small farms and large plantations alike. Southerners had no way to vote against these taxes, because only politicians approved by the northerners could run for office.

In these circumstances, any northern businessman would be viewed as an outsider and an enemy. Leo, standing only five feet six inches tall and weighing only 120 pounds, could never pass for a typical well-fed, physically fit southern gentleman. With his delicate, fine-boned face; a full, fleshy mouth; and nearsighted eyes that appeared to bulge behind his thick glasses, Leo looked to the people of Atlanta exactly the image of a calculating Yankee.

Nevertheless, Leo was so successful that he was promoted to a directorship, a vice presidency, and the position of factory superintendent. But his professional success did little to help him feel at ease in southern society. People were more formal in their manners than what he had seen in New York. Worried that he might somehow offend someone in this strange new world, Leo carefully considered his every action and word before doing or saying anything, to the point that he appeared stilted and distant.

But Leo worked to make himself at home in Atlanta's Jewish society, and there he was welcomed. Within a week of arriving, Leo was introduced to twenty-year-old Lucille Selig and began courting her. The Seligs were a high-society family in Atlanta's Jewish community, but Leo's letters to Lucille show that he was more in love with the girl than her social status. Generously plump, pretty, dark-haired, and quick-witted, Lucille seemed a good match for Leo, teasing him out of his serious nature and making her affection for him clear. When Valentine's Day came, she showed him how he had captured her heart by giving him a handmade red construction-paper heart displaying his name. On June 14, 1909, just five days after he proposed to her and she accepted his hand in marriage, Leo wrote:

Your kindly words for me are much appreciated and are treasured up on the scrolls of memory.

I am not much on the sentimental letter writing. Read between the lines and see if you can feel the warmth of the writer's feelings for you!



Leo Frank and Lucille Selig in Atlanta, Georgia. Leo was introduced to Lucy shortly after arriving in Atlanta in 1908. They were married in 1910.

*... Continue to enjoy yourself, sweet one, and be
assured of a joyous welcome home at the hands of
Yours for eternal happiness
Leo*

Lucille and Leo were married on November 30, 1910, and Lucille admitted that she might be "foolishly fond of him. But he is my husband, and I have the right to love him very much indeed, and I do. If I make too much of him, perhaps it is because he has made too much of me." In the spring of 1913, their married life became even happier when Lucille proudly announced that she was pregnant.

Happy in his marriage and in his work, Leo quickly rose to prominence in Atlanta's Jewish community. He worked with a number of charitable organizations and was elected president of the local B'nai B'rith chapter, a Jewish community service organization. Despite his success with the National Pencil Company and Jewish society, however, Leo was not popular among typical Atlanta citizens.

Many Atlanta citizens had their reasons to dislike everything Leo Frank represented. First of all, he was Jewish. The Old South had not been particularly anti-Semitic, or prejudiced against Jews. In fact, Judah P. Benjamin had risen to the position of attorney general of the Confederacy and then secretary of war. Still, while Atlanta's sizable Jewish population was respected, they were still in the minority, and they were considered "different."

Leo was even more different from other Atlanta Jews because he was both a Yankee and an industrialist. This combination made him an unappealing addition to any southern community. Reconstruction had hit southern farmers and rural workers hard. Many were forced to give up their farms and move to cities where they could find industrial work. Between 1900 and 1913, Atlanta had doubled in population. Newcomers desperately hunted for jobs in the mills and factories. Wages were so low (ten to fifteen cents an hour—only two-thirds of what workers in the North earned) that families had as many members working as possible.

Nearly all the production-line employees at the National Pencil Company were teenagers. Although child labor laws had technically been in existence in some states since 1836, the first federal child labor law would not be written until 1916. That was too late to help Mary Phagan, who had started working in a textile mill when she was only ten years old.

Newspapers fed the resentment that Atlanta readers already felt toward northern-owned factories. The *Atlanta Georgian*, owned by sensationalist publisher William Randolph Hearst, was willing to exploit any issue that would sell papers and, with more passion than accuracy, regularly attacked factory owners. The front page of the Monday morning *Georgian* showed a horrifying photograph of Mary's body on the slab at the undertakers. Five pages of articles were full of



In the weeks after the murder, newspapers published photographs of Mary Phagan's clothes and other evidence found around her body. This photo of the clothes Mary was wearing and of the cord found around her neck was published in the April 30 issue of the *Georgian*.

details about the murder and the family's grief—many of which had been exaggerated (and occasionally invented).

There was no twenty-four-hour cable news coverage in 1913, no Internet blogs or YouTube videos or Twitter updates, but people then had the same fascination with the news as they do today. They learned about the twists and turns in any newsworthy event by buying new editions of the papers. Each newspaper published several editions every day and would strive to sell the most papers by coming up with breaking news and dramatic headlines to capture the reader's attention.

By that afternoon, both the *Atlanta Journal* and the *Atlanta Constitution* were featuring photos of Mary Phagan and presenting the girl as southern womanhood defiled, enslaved by northern industrialization. The *Constitution* offered a reward of one thousand dollars to anyone who'd seen Mary after noon on Saturday.

By the time those afternoon editions hit the streets, a young machinist had made news by shifting the scene of the crime from the basement to the upper floors—near Leo's office.

“I COULD TELL IT WAS BLOOD BY LOOKING AT IT”

INVESTIGATION

When eighteen-year-old Robert Barrett got to work a little after 6:30 Monday morning, he saw a red spot on the floor of the factory's second-story metal department, where Mary Phagan had worked. Robert admitted, "I never searched for any blood spots before, until Miss Jefferson came in and said she understood Mary had been murdered in the metal department, then I started to search right away; that was the only spot I could find; I could tell it was blood by looking at it. I can tell the difference between blood and other substances. I found the hair some few minutes afterward—about 6 or 8 strands of hair and pretty long." He reported his finds to his foreman, Lemmie Quinn, who called the police.

Detective Starnes arrived, surrounded by reporters, to find a group of factory workers crowding around the machine where Barrett worked. Fourteen-year-old Magnolia Kennedy, a metal department worker like Mary, stared at the strands of hair Robert had found twisted around his lathe and announced, "It's Mary's hair. I know it."

Detective Starnes hadn't come alone this time. Police Chief James Litchfield Beavers had realized this case was going to be important to all of Atlanta, so he decided to make sure that the investigation was proceeding correctly. Beavers examined the hairs and had an officer chip out a few pieces of the red-splashed wooden floor so he could test

it himself, using a bottle of alcohol. When the color didn't dissolve in the alcohol (not a very scientific test, even in 1913), Chief Beavers announced to the reporters that the substance was blood. This created the suspicion that Mary had been killed near Leo Frank's office and then dragged to the elevator and taken downstairs to the basement.

Reporters, searching for new scoops to fill the pages of those extra editions, eagerly questioned the workers about Mary and about what went on inside the factory. The teenage employees were flattered by the attention, and many of them agreed to be interviewed. Police investigators were equally willing to talk to the press, presenting developing theories as solid information. Newspapers printed more and more editions in the first days after Mary's body was found, whipping their readers into a frenzy with their constantly breaking news.

Detective Black didn't go to the factory with the other policemen. He and another officer went to Leo Frank's house to escort the superintendent back to the police station. As they walked downtown, Leo repeatedly asked why they wanted him. When Black wouldn't answer, the other officer said, "Well, Newt Lee has been saying something."

Finally, they reached the station house. Once again, Leo passed through the marble archway and under the scowling gargoyles that watched over the towering Gothic building. Leo was still waiting to speak with Detective Chief Lanford when Herbert Haas, the National Pencil Company's attorney, arrived.

A few minutes later, Luther Rosser joined Haas. Rosser would act as co-counsel in the case. Rosser handled high-profile corporate cases in Atlanta and was the law partner of Governor-elect John Slaton. Rosser liked to present himself as a robust country boy who rarely wore a tie—something of a diamond in the rough. But he had a reputation as a powerful trial attorney who was a master at cross-examination, a talent that no one expected would be needed at this point.

Busy talking to each other, Rosser and Haas missed Detective Chief Lanford's return and his beckoning of Leo into his office. When they realized Leo was gone, the lawyers became outraged that

he was talking to the police without counsel, and Rosser demanded to be allowed to accompany his client.

Chief Lanford was surprised by the lawyer's vehemence. He had simply wanted to ask Leo a few questions about Newt Lee's time slip for his Saturday night rounds. Rosser's outburst seemed overly dramatic since Leo Frank hadn't been charged with anything. Chief Lanford began to wonder why the lawyer was so determined to protect his client.

When Chief Lanford showed the time slip to Leo, Leo noticed that there were problems with it. The watchman should have been punching in regularly as he made his rounds, but he had missed several punches. While this made Newt Lee look more guilty, Chief Lanford now viewed Leo himself with increasing suspicion. He asked Leo repeatedly to clarify his answers about the watchman's job and his own motivations in setting up Newt Lee's schedule on Confederate Memorial Day.

Outraged that police could even consider Leo Frank as a possible suspect, Rosser blustered, "Why, it's preposterous. A man who would have done such a deed must be full of scratches and marks and his clothing must be bloody."

Eager to discourage police suspicion, Leo voluntarily stripped, displaying his unscratched chest and arms. Haas suggested that police should be allowed to inspect the dirty laundry at the Franks' home, and Leo agreed. Detective Black and another officer sorted through all Leo's laundry without finding any blood.

After they left, Leo felt confident that he had allayed suspicions about himself. Now he concentrated on how he could get the case solved quickly so that factory production could return to its normal schedule. He phoned his assistant, Herbert Schiff, and asked him to find outside investigators, preferably Pinkerton detectives. The Pinkertons had a reputation for working for large companies whose owners paid them to do what was best for the company, whether by investigating crimes or breaking strikes.

By Monday afternoon, Leo felt he had protected his company. He sent a telegram to his uncle, assuring him that he had the situation well under control.

Members of Mary Phagan's family at her funeral on April 29, 1913. Left to right: Ollie Mae Phagan, Mary's sister; Fannie Phagan Coleman, her mother; J. W. Coleman, her stepfather; Ben Phagan, her brother; and Lizzie Marietta Durham, her aunt.



But according to the Monday evening and Tuesday morning editions of the newspapers, nothing was under control. Both the *Georgian* and the *Constitution* warned their readers that police claimed they were working around the clock to discover the identity of Mary Phagan's killer but without success. The papers offered new rewards for any additional information.

As Mary Phagan's family buried their daughter on Tuesday morning in her hometown of Marietta, they certainly hoped the



police would soon identify the murderer. The Reverend T. T. G. Linkous prayed over Mary's grave with steadily increasing fervor:

We pray for the police and the detectives of the city of Atlanta. We pray that they may perform their duty and bring the wretch that committed this act to justice. We pray that the authorities apprehend the guilty party or parties and punish them to the full extent of the law. Even that is too good for the imp of Satan that did this. Oh, God, I cannot see how even the devil himself could do such a thing.

"A VICTIM WORTHY TO PAY FOR THE CRIME"

ARREST

Fourteen-year-old Alonzo Mann worked as an office boy at the National Pencil Company. One of his jobs was to bring his boss the morning newspaper. Britt Craig's article on the front page of the Tuesday *Constitution* predicted that Leo Frank would be arrested before the day was over. Alonzo recalled, "I cried when I read the paper before I gave it to Frank. Frank talked to me, telling me always [to] be good as he was in life and that way it would always work out right. Frank could tell I cried."

Not all the newspaper morning editions agreed with Britt Craig. The *Journal* headlines screamed "THREE HANDWRITING EXPERTS SAY NEGRO WROTE THE TWO NOTES FOUND BY BODY OF GIRL" and claimed that Newt Lee's guilt was proven. But Detective Black did not believe that the night watchman could have acted alone to commit this murder. He thought the real culprit was someone who had paid him to write the notes to confuse the police. And he was certain that someone was Leo Frank.

Late Tuesday morning, Black investigated Lee's apartment and found a bloody linen shirt. He thought the shirt looked freshly pressed, suggesting that it hadn't been worn. The blood looked as if it had been rubbed into the fabric, not spattered onto it while someone was wearing it. Black suspected that Leo had offered his own laundry to be searched (even though Haas, not Leo, had made the suggestion) specifically so the police would also search Newt Lee's laundry—and

to be admitted. As soon as he got upstairs, he upbraided Chief Beavers for trying to keep a lawyer away from his client and then stormed into the interrogation room.

Leo was being questioned by Detective Black—in the presence of Pinkerton detective Harry Scott, who had been put in charge of the National Pencil Company's case. In fact, when Rosser appeared, Black let the Pinkerton detective take over the interrogation.

Leo had hired Pinkertons to protect the reputation of his company. Now one of them was helping the police build a case against him! Leo was unaware that Pinkerton detectives often worked closely with the police on their cases. And he certainly hadn't known that Detective Scott had previously worked closely with Detective Black.

Angry, Leo pointed out, "You were hired by me, if you remember!"

To Leo's surprise, Scott replied, "I was put on the case by my superiors. They were employed to catch the murderer. . . . If you are the murderer, then it's my duty to convict you."

While Leo was being interrogated, his wife hurried to the police station with her father and her brother-in-law. The same police officer who tried to keep Luther Rosser out of the station successfully kept Lucille away from her husband. In the lobby office, crowded by aggressive reporters, Lucille insisted that Leo was innocent and then broke down sobbing.

When Leo heard that his wife was downstairs, in tears, he sent a message telling her to go home, assuring her that he would soon be freed. Lucille left, admitting that she "was humiliated and distressed by numerous people, maybe newspaper reporters, maybe somebody else, snapshotting me with hand cameras."

Soon Atlanta erupted with rumors that Lucille had never come to visit Leo because she knew he was guilty, that she had been in the process of divorcing him at the time of Mary's murder, and that only large sums of money had persuaded her to stay by his side. Later, Lucille would write to the editor of the *Augusta Chronicle*, desperate to expose "that falsehood about my conduct toward the one whom I loved more dearly than my own life, whom I yet love, thank God."

She explained:

I went to the police station and begged to see him. Think of the tender solicitude for me in begging me not to come to his cell. He knew he was innocent; I knew he was innocent; he expected to be out without delay; he didn't want me to see him behind bars. Because he considered me, even above himself, he had to bear the burden of lies, and I had to bear them. Not a day passed after he was taken from home that we did not talk to each other. His concern was always for me. "Don't come down here, dear" he would say, "I don't want you to remember having seen me in this place."

After sending his wife home, Leo's ordeal was far from over. Police had been interrogating Newt Lee, and they decided to put the two men together. Just as Leo was about to lie down on the cot in his cell that night, Black and Scott asked him to talk to Newt Lee. They claimed they wanted him to get the watchman to admit his guilt, and Leo agreed. He remembered Black telling him to tell Lee "that you are here and that he is here and that he better open up and tell all he knows about the happenings at the pencil factory that Saturday night, or you will both go to hell."

Leo entered the interrogation room and did as requested, but Lee insisted he knew nothing to "open up" about. Both Detective Black and Pinkerton detective Scott listened outside the door as the two men talked. Leo used Black's words—but later Black insisted he never told Leo what to say. Scott noticed that Leo was clearly nervous and uncomfortable talking to the watchman. "He was very squirmy in his chair," the Pinkerton detective recalled, "crossing one leg after the other and didn't know where to put his hands; he was moving them up and down his face, and he hung his head a great deal of the time the negro was talking."

Leo had reason to become a good deal more "squirmy" soon. As he was led out of the interrogation room, Leo recalled, Scott and Black went in, "and then began questioning Newt Lee, and then it

was that I had my first initiation into the third degree of the Atlanta police department. The way that fellow Black cursed at that poor old Negro, Newt Lee, was something awful. He shrieked at him, he hollered at him, he cursed him, and did everything but beat him.” Before this, Leo had believed that cooperating with the police would help them find the real killer and free him. Now he feared it might not work that way.

Newt Lee’s continued protestations of innocence under their aggressive questioning convinced both detectives that the night watchman was not guilty of the murder of Mary Phagan. They were equally certain that Leo Frank was the killer. And they could sense that the citizens of Atlanta shared this opinion. Later, the pastor of Mary’s Baptist church wrote to a friend, “My feelings, upon the arrest of the old negro watchman, were to the effect that this one old negro would be poor atonement for the life of this innocent girl. But, when on the next day, the police arrested a Jew, and a Yankee Jew at that, all of the inborn prejudice against Jews rose up in a feeling of satisfaction, that here would be a victim worthy to pay for the crime.”

First, however, the legal process had to be observed. A coroner’s inquest had to officially determine the cause of Mary Phagan’s death before the case could be turned over to Solicitor General Hugh Dorsey to prosecute the villain. But for that prosecution to be successful, the police and Dorsey still needed one thing: a motive for the killing.

"MISCONDUCT AT THE FACTORY"

SURPRISES AT THE INQUEST

Fifteen-year-old George Epps waited impatiently through the first part of the coroner's inquest on Wednesday, April 30. The newsboy was eager to testify about seeing Mary on the streetcar the day she was killed. What he had to tell the coroner about a possible motive in Mary's death would shock Atlanta.

A coroner's inquest is a court proceeding to determine the cause of death. Before anyone can be charged with murder, an officer of the court called a coroner must determine whether the victim

died of natural causes, accidental causes, or foul play. Coroner Paul Donehoo had six jurors to help him weigh the evidence and settle on a verdict.

The inquest opened with statements from the police officers who had first seen Mary's body in the factory basement. Then Newt Lee testified about finding the body and calling the police, followed by several factory employees. So far the inquest was going as expected. Donehoo was a highly respected officer of the court, one who the people of Atlanta believed brought unusual meaning to the claim



Fifteen-year-old George Epps provided crucial testimony at the coroner's inquest.

“Justice is blind.” Paul Donehoo was, indeed, blind. Many people thought his inability to see witnesses helped him do his job, because he listened more carefully.

Donehoo certainly listened carefully to George Epps when the teenager took the stand. George stated that he had ridden on the streetcar with Mary the morning of her death and made a date to watch the parade with her and then go to a movie—after she picked up her pay. Then George announced that the idea of going into the factory to get her pay had frightened Mary, because Leo Frank would be there.

“When she would leave the factory on some afternoons, she said, Frank would rush out in front of her and try to flirt with her as she passed. She told me that he had often winked at her and tried to pay her attention. He would look hard and straight at her, she said, and then would smile. It happened often, she said.” George added, “She told me she wanted me to come down to the factory when she got off as often as I could to escort her home and kinder protect her.”

This testimony supported the deep-seated resentment so many members of Atlanta’s working class felt against northern industrialists. These Yankees had dragged families away from their farms where their daughters were safe and plunged them into city life where young girls had to go to work and risk unwanted sexual advances from bosses or coworkers. When people read the newspaper headlines accusing Leo Frank of flirting with Mary, they were both outraged and titillated. They wanted to hear more about what went on inside this factory.

At first, so did the coroner. The solicitor general, making the case against Leo for the State of Georgia, had subpoenaed many of Mary’s fellow employees to testify. But the more Donehoo considered George’s testimony and what the other employees might say, the more he feared the inquest was moving too fast. After meeting with chiefs Lanford and Beavers, he adjourned the inquest for a few days. That would allow public outrage to settle down and let the police investigation proceed.

While the police continued their investigation, so did the Pinkerton detectives under Harry Scott. In fact, Scott and Black

concentrated their efforts by investigating together. The Pinkertons might have originally been hired by Leo, but they were no longer investigating the case without bias. They were now working with the police specifically to find evidence that would keep their employer behind bars. In fact, Detective Scott told his fellow Pinkertons, “Unless the Jew is convicted, the Pinkerton Detective Agency [will] have to get out of Atlanta.”

When the inquest resumed on Monday, May 5, Leo took the stand. Donehoo wanted to get a sense of the superintendent’s character. Unlike the shivering, nervous man who had made police so suspicious, the witness who answered the coroner’s questions was well dressed and presented a calm, articulate face to jurors and even to reporters. Leo repeated his account of an ordinary work Saturday: he had gotten to his office early; met with his department heads; put the office boy, Alonzo Mann, to work; collected the mail; dictated some letters to his stenographer; spoke to several employees who had come in; seen the office boy and stenographer leave; and given a girl her pay envelope shortly after noon.

Then he had done some paperwork; locked up for lunch while several men continued to work in the factory; eaten lunch with his father-in-law; and walked through town, greeting several employees who were in the crowd watching the parade. He returned to work after deciding not to attend the afternoon baseball game because of rainy weather and then went home to a quiet evening with his family. From the house, he had telephoned night watchman Newt Lee, since the man had only started working for the company two weeks earlier. It was all routine activity, but it left almost an hour unaccounted for between when he paid Mary and when he left for lunch, with no witnesses to confirm that he was working in his office. The police were convinced that Mary Phagan had been murdered during that hour.

After nearly four hours of testimony, Donehoo asked if Leo would like to add anything else about the day. Unexpectedly, Leo said that one of the plant foremen, Lemmie Quinn, had visited him a few minutes after he had paid the girl. Leo had not mentioned this previously, but it gave him an alibi for what had looked like unaccounted-for time.

The coroner was astounded that he could have forgotten something so important, but Leo simply said that speaking with Quinn had slipped his mind until Quinn had mentioned it on Monday, a week ago. Leo chose not to reveal that his lawyers had advised him to save the information for the inquest and say nothing to the police about it, advice he agreed with after seeing the police in action with Newt Lee. To reporters, Quinn confirmed that he had spoken with Leo in his office. Newspapers printed new editions proclaiming "Leo Frank Innocent."

Despite the favorable impact of Leo's testimony, considerable evidence had materialized that made Leo look like a sexual predator who lusted after the young girls he employed. A streetcar conductor found a suspicious note tucked under one of the seats in the same car that Mary had ridden on Saturday. The note claimed that Leo Frank had made numerous sexual advances to Mary. Police asked Helen Ferguson, Mary's friend, to look at the note, which claimed that Mary had told the writer that Leo Frank had put his arm around her and asked if she "wanted to take a joy ride to Heaven." The note claimed that Mary had asked how, and Frank had promised to show her someday. It was signed "A 13-year-old chum of Mary." When Helen read the note, she immediately recognized the handwriting and told police that the letter had actually been written by Grace Hicks, the seventeen-year-old girl who had identified the body.

The idea that something was going on with the factory girls may have had its basis in fact. Helen told Pinkerton agent L. P. Whitfield, "I have not seen any misconduct at the factory lately, but there used to be misconduct during the dinner hour among some of the girl and boy employees. I have never seen anything myself in this connection but have heard of same. Mr. Frank heard of the improper conduct and he endeavored to stop the boys and girls from being together during the dinner hour."

Some of the girls who were interviewed wanted people to think they knew more than they did. Helen also reported, "Grace Hicks was at my house on April 27th, 1913 and she stated that she would tell all she knew about the murder of Mary Phagan, but that she was afraid that the negro Newt Lee, would get out of jail and kill her."

The factory workers who did testify at the inquest were even more outspoken. Fourteen-year-old Nellie Pettis's sister-in-law used to work at the factory, and Nellie had seen Leo a few times. She testified, "I went into the office of Mr. Frank, I asked him for her. He told me I couldn't see her unless I 'saw' him first. I told him I didn't want to 'see him.' He pulled a box from his desk. It had a lot of money in it. He looked at it significantly and then looked at me. When he looked at me, he winked. And as he winked he said: 'How about it?' I instantly told him I was a nice girl."

Another Nellie, sixteen-year-old Nellie Wood, had worked at the factory herself and testified that Leo "asked me one day to come into his office saying that he wanted to talk to me. He tried to close the door, but I wouldn't let him. He got too familiar by getting so close to me. He also put his hands on me."

When the coroner asked where Leo had put his hands, the girl said, "He barely touched my breast. He was subtle with his approaches and tried to pretend that he was joking, but I was too wary for such as that."

Some workers were unwilling to testify. A tipster pointed out two men, Ely Burdett and James Gresham, who had "informed him that Frank had been familiar with several of the girl employees and that they were afraid to testify against Mr. Frank." Another factory employee seemed conflicted in his testimony when he stated, "I have never seen Mr. Frank do anything unbecoming to a gentleman, except at times when talking to some of the women employees, it seemed to me that he rubbed up against them a little too much."

Former worker Tom Blackstock testified, "I've often seen him picking on different girls," also saying that the superintendent would "rub up against" the girls. This was a phrase that a number of the men who worked in the factory repeated word-for-word. The inquest's jury had to wonder: was this a coincidence, or had they been coached?

Although Leo's testimony made a good impression, the damage to his character was done by the end of the inquest. Thanks to the sensational newspaper coverage, the people of Atlanta viewed him as a

Yankee Jew who had not only forced industrialization upon them and forced their daughters into his factory but who had also attempted to force himself upon those daughters. The inquest's jury came in with these preconceived notions, and it took them only ten minutes to recommend that the police hold Leo Frank, along with Newt Lee, for further questioning in the murder of Mary Phagan.

"HE WASN'T THERE EITHER"

INDICTMENT

Recommending further questioning was one thing. Finding answers that would lead a grand jury to formally charge, or indict, either Leo Frank or Newt Lee for murder was another. Before a suspect could be tried for a crime in a court of law, a grand jury must be presented with enough information to indict him. That job fell to Solicitor General Hugh Dorsey.

As Atlanta's prosecutor, Dorsey's job was to prosecute and convict the accused. Although Dorsey was an ambitious lawyer and politician, he had been remarkably unsuccessful in prosecuting several major cases. He needed a big, public success to bolster his career, and prosecuting the murder of an innocent young girl seemed the perfect opportunity.

Born in a small town, yet raised in the city, Dorsey was capable of acting like a country boy with ordinary working folks or behaving like a shrewdly calculating gentleman in the company of other city lawyers. Dorsey seized authority for the murder case as soon as he could, by ordering the exhumation and autopsy of Mary Phagan himself.

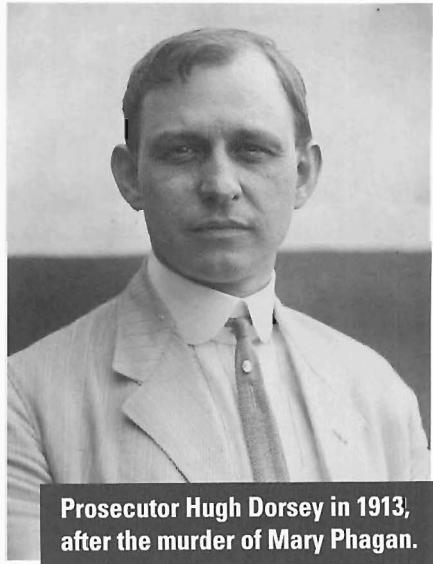
Coroner Paul Donehoo, Dr. Henry Harris, and Fulton County physician J. W. Hurt inspected Mary's body after it was removed from the grave. Dr. Harris paid particular attention to her stomach contents, as this would help him determine the time of death more accurately. Dorsey also ordered the city chemist, Dr. Claude Smith, to test the shirt from Newt Lee's apartment and the bloodstains that Robert Barrett had found in the factory metal shop.

Then Dorsey surprised everyone by ordering a second exhumation of Mary's body two days later and blaming it on police carelessness. Apparently, Dr. Hurt had originally taken hair samples from Mary's body, but they had been lost while in police possession. This time, a fingerprint expert was called in to examine the fingerprints on Mary's throat. Forensic scientists also took photographs of the bite marks on the girl's left shoulder.

Dorsey quickly began releasing new information to the press. Examining other factory workers than the ones who had testified at the coroner's inquest, he found fourteen-year-old Monteen Stover, who used to work at the factory and still had some pay coming to her. She said she had gone to the pencil factory a little after twelve that Saturday, shortly after the time Mary Phagan would have picked up her pay. "I was sure Mr. Frank would be in his office," Monteen told reporters after speaking with Hugh Dorsey, "so I stepped in. He wasn't in the outer office, so I stepped into the inner one. He wasn't there either. I thought he might have been somewhere around the building, so I waited. When he didn't show up in a few minutes, I went to the door and peered further down the floor among the machinery. I couldn't see him there."

Despite Lemmie Quinn's insistence that Leo had been in his office, Monteen's statement suggested that the superintendent had not been there the whole time. Then Mrs. Nina Formby, a madam of a nearby house of prostitution, claimed that Leo was a regular customer—and that he had called her on Confederate Memorial Day, asking for a place to bring a young girl who'd been taken ill. Mrs. Formby shared her story with the press and even claimed that she was being bribed to keep quiet or leave town until the trial was over.

More evidence poured in. Dorsey's handwriting expert stated that the murder notes could not have been written by Newt Lee.



Prosecutor Hugh Dorsey in 1913, after the murder of Mary Phagan.

This supported Dorsey's contention that Leo had committed the crime and the night watchman had done nothing except discover the body. Dorsey believed that Leo had often used his status as factory superintendent to get his way with his young female employees and that things had gone wrong with Mary Phagan, leading to violence. However, the evidence that lawyers are allowed to introduce is limited by rules of procedure. Dorsey knew these rules would prevent him from introducing the idea of sexual misconduct, unless the defense first introduced the issue of the superintendent's character. So he decided to force Leo's attorneys to defend their client's character by letting the press run with the rumors about Leo's promiscuous activities. Meanwhile, Dorsey focused on a timeline of circumstantial evidence that would put Leo out of his office and unaccounted for at the time when Mary was killed.

On May 23, 1913, Dorsey convinced the grand jury to indict Leo Frank for the murder of Mary Phagan. He did so without revealing that he had an eyewitness who would be able to describe exactly where Leo was when Mary was killed and how the body ended up in the factory basement.

"WE WANTED ANOTHER STATEMENT"

THE FIRST EYEWITNESS

Dorsey's eyewitness was Jim Conley. Conley, twenty-seven, was a sweeper and odd-jobs man at the factory. He had a drinking problem and lived with a woman he had never married. He was also black. In the eyes of the white Atlanta society of 1913, Conley should have been a prime suspect. He had been in trouble with the law before and had paid several fines and served two sentences on the chain gang, once for attempted armed robbery. But Dorsey, as well as the police, wanted someone other than an African American working man to be guilty of the death of a white girl who had been murdered in a factory. They wanted to convict a white man—and a Yankee industrialist—of this horrendous crime.



Jim Conley from 1914, after the murder of Mary Phagan.

Police had originally questioned Jim Conley about Mary Phagan's death on May 1. He had been seen rinsing out a stained shirt at the factory but had claimed he was trying to wash out rust stains. Police had never tested the shirt for blood because Conley also said he'd been drunk all day Saturday, when Mary was killed, and hadn't been near the factory. And he claimed he couldn't read or write, which meant he couldn't have written the two notes found by Mary's body.

Then Pinkerton agents discovered that witnesses had seen a black man lurking around the factory lobby on Saturday. Detective Black and Pinkerton detective Scott found Jim Conley's signatures on several papers. They compared them with the murder notes and believed the handwriting to be the same. Apparently the man could write. They brought him in again for questioning.

Confronted with his signatures, Conley admitted that he could write but insisted that he had nothing to do with the murder notes. The detectives decided to lock him in an isolation cell to let him think about it. There is no police record showing what Black and Scott said to him, but on May 24, Conley was ready to make a new statement to the police, the Pinkerton investigators, and Hugh Dorsey. It was a completely different statement—one that implicated Leo Frank.

Jim Conley claimed that on Friday, April 25, Frank "asked me could I write and I told him yes I could write a little bit." Then Conley said the superintendent had dictated the two letters that had been found near Mary's body and had given Conley a box of cigarettes and \$2.50. Conley stated, "He told me he had some wealthy people in Brooklyn and then he held his head up and looking out of the corner of his eyes said, 'Why should I hang?'"

Initially, the investigators were confused by Conley's statement, because it suggested that Leo had planned the murder the day before and had prepared the notes in advance. Yet Dorsey was convinced it had been a crime of passion. And if Conley *was* speaking the truth, why had he waited so long to come forward? Pinkerton detective Scott later said, "We pointed out to him why the first statement would not fit. We told him we wanted another statement."

Several days later, Conley asked to speak with Detective Black. This time he admitted that he'd made several mistakes the first time. "I made this statement in regard to Friday, in order that I might not be accused of knowing anything of this murder, for I thought that if I put myself there on Saturday, they might accuse me of having a hand in it," he explained. Then he went on to say that on Saturday the superintendent had asked him to sit by the entrance steps until Conley heard him whistle. When he heard the summons, Conley went up to Frank's office and found his boss very nervous and upset. Conley said he then wrote the notes at Leo's dictation, not knowing anything about the murder, and had received the cigarettes and money, as he'd said before.

This second affidavit was more useful to the prosecution, because it confirmed much of their theory of Leo's actions on Saturday. However, the press quickly pointed out that Conley's shifting story implicated himself. Many thought he should be indicted instead of Leo Frank.

The authorities wished that Conley's statement pinned the murder more clearly on Leo's shoulders, so police interrogated the man one more time. Dorsey wasn't present, but his assistant raced back and forth, bringing new questions for the sweeper and carrying his answers back to the solicitor general. This time Conley's affidavit was what the prosecution needed. He combined his previous stories with new details:

When he whistled for me I went upstairs and he asked me if I wanted to make some money right quick and I told him "Yes, sir," and he told me that he had picked up a girl back there and had let her fall and that her head hit against something, he didn't know what it was, and for me to move her, and I hollered and told him the girl was dead, and he told me to pick her up and bring her to the elevator.

Then he described how he had tried to carry the girl, but she proved too heavy for him to manage alone, so the superintendent

had helped him carry her onto the elevator and then down to the basement.

After Conley wrote the notes from dictation,

Mr. Frank looked at it and said it was all right and Mr. Frank looked up at the top of the house and said, "Why should I hang, I have wealthy people in Brooklyn," and I asked him what about me, and he told me that was all right about me, for me to keep my mouth shut and he would make everything all right, and then I asked him where was the money he said he was going to give me and Mr. Frank said, "Here is two hundred dollars," and he handed me a big roll of greenback money.

Later, Conley added that the superintendent had asked for the money back and said he would give it back on Monday if nothing happened.

This was what Dorsey had been looking for: eyewitness testimony that proved Leo Frank's guilt. The police took Conley to the factory, sent most of the workers home, and had him show them and a group of reporters where all the action of his affidavit had occurred. Repeating his story, Conley led them through the factory, acting out the events as he described them. One of the employees who remained, the day watchman J. M. Holloway, pointed out that the police often corrected Conley. If he said the body was in one place, at times they reminded him it was in a different location:

The negro said "let's go back this way", and he shows them a place about 20 feet the other way, and Lanford said "Here is where they dropped it". Now they said "aint this about where you dropped the girl"? and the negro, he started in another direction, and then he said "yes sir". They said "aint this where you dropped it"? and he said "yes".

But the next editions of the newspapers all praised Jim Conley for coming forward and presented his evidence as absolute truth.

Conley continued introducing new details to flesh out his story for the reporters who crowded around his jail cell. Dorsey was pleased to have his witness, but he was afraid that Conley would say something to contradict his latest statement (which already contradicted his two earlier statements) and damage the case against Leo Frank.

Then the *Georgian* announced that an unnamed man had been shooting craps with Conley in the pencil factory basement on April 26 and had seen Jim Conley himself attack Mary Phagan. The *Georgian* would subsequently identify this witness as Will Green, an African American carnival worker. "This fellow was half drunk and was losing money to me. He got mad and cursed his luck," said Green.

Before long a little girl went upstairs. This negro said he was going to take her money away from her when she came down. I thought he was fooling at first, but when she came down he started for her. I yelled at him not to do it, but he kept right on. Then I skipped out, for I didn't want to get mixed up in any trouble. I stayed around town until the next Monday, and then I read all about how a little girl had been killed . . . and I knew that she was the one I had seen come downstairs at the factory.



A photograph of attorney William Smith after Leo Frank's trial. A newspaper paid Smith to be Jim Conley's lawyer.

Investigators were unable to find the carnival worker and bring him to Atlanta. This was good news for Hugh Dorsey, as it could have damaged his case. He didn't want Conley attracting any more press attention. He met with Chief Lanford and William Smith, Conley's attorney. (Smith

was being paid by the *Atlanta Georgian* to represent Jim Conley and to give the paper the inside scoop.) They all agreed that it would be a good idea to return Conley to the police station until the trial, where reporters—and other lawyers—could only speak to him with Smith’s or Lanford’s approval.

Leo’s attorneys, however, worked to stir up public opinion to bring pressure on the State of Georgia to ask the grand jury to indict Jim Conley for Mary’s murder. Dorsey resisted strongly, insisting that they had already indicted one man for the crime and should wait until his trial was over before considering any other indictments. In the end, he allowed the grand jury to hear charges against Conley, but Dorsey spoke persuasively to them for an hour, expressing his confidence in his case against Leo Frank and explaining why Conley’s indictment would jeopardize it. The grand jury voted almost immediately not to indict Conley.

That left Dorsey free to construct the rest of his case against Leo Frank.

“MOST ALL A PACK OF LIES”

WITNESS PREPARATION

Even before the trial began, George Epps felt a little concerned. There was something about his testimony that the newsboy wanted to discuss with Hugh Dorsey. But George would later say that Dorsey didn't want to hear him, snapping, “Just stick to that.” He understood that the solicitor general wanted him to simply repeat his testimony from the inquest, even if he was uncomfortable with some part of it.

George wasn't the only person who got a glimpse of Dorsey's darker side during the days before the trial. The solicitor general summoned numerous potential witnesses to his office, ordering them to be arrested if they did not come willingly. He intended to use not only Leo Frank's teenage employees to prove his case but also anyone who was close to Leo's family.

One of those people was Minola McKnight, the cook in the house Leo and Lucille Frank shared with Lucille's parents, the Seligs. Dorsey needed her testimony to support the timeline he was carefully constructing, a timeline that would leave enough time for Leo to have committed the murder before meeting his father-in-law for lunch. To do that, he wanted to prove that Leo had actually arrived home later than he claimed.

Hearing about the rewards offered by the newspapers, Albert McKnight had told his boss that his wife had information that could help the prosecution, and his boss passed the tip on to the police. But when they questioned Minola, she told them the same story that Leo had told, that he had arrived home at 1:20 and had lunch with his

father-in-law because the two ladies had already eaten and were on their way to an opera matinee.

That wasn't what Dorsey hoped to hear. The police called in her husband to "remind" her, but Minola McKnight wouldn't change her story. She even claimed that she and Albert had recently quarreled and suggested that he was lying to get back at her. So the police locked Minola in jail overnight and began grilling the hysterical woman again the following morning. Dorsey probably could not have gotten away with handling most witnesses this way, even a working-class woman, but Minola McKnight was African American. He had no problem ignoring her rights with impunity.

Desperate to be released, she finally signed a statement that said Leo had gotten home at 1:20 but had rushed out again without eating and when he came home that evening, he drank heavily and was too upset to sleep. He told his wife, who then told Minola, that "he was in trouble, that he didn't know the reason why he would murder, and he told his wife to get his pistol and let him kill himself." The statement also said that her employers had started paying her extra after hearing that the solicitor general wanted to question her. "They just said, 'Here is \$5, Minola,' but of course I understood what they meant even if they didn't tell me anything . . . I understood it was a tip for me to keep quiet."

After Minola signed this statement, the police released her. Chief Lanford proudly told the press about their new evidence against Leo Frank. But when a reporter from the *Georgian* questioned her about her statement, Minola McKnight told him bitterly, "It's most all a pack of lies."

Furious at the way her family's employee had been treated, Lucille expressed her outrage publicly even though Leo's attorneys urged her to remain silent. She wrote an open letter to Atlanta's citizens that was published in the three main newspapers:

That the Solicitor, sworn to maintain the law, should thus falsely arrest one against whom he has no charge and whom he does not even suspect and torture her, contrary to the laws, to force her to give evidence tending

to swear away the life of an innocent man, is beyond belief.

Where will this end? My husband and my family and myself are the innocent sufferers now, but who will be the next to suffer? . . .

This torturing process can be used to produce testimony to be published in the newspapers to prejudice the case of anyone the Solicitor sees fit to accuse.

Dorsey sidestepped the charges, pointing out “the wife of a man accused of crime would probably be the last person to learn all of the facts establishing his guilt, and certainly would be the last person to admit his culpability,” and saying it was his duty to find evidence that would convict someone who had been indicted by the grand jury.

The solicitor general also distracted attention from his misconduct by attacking the police for leaking Minola’s affidavit in the first place and threatening to ask the grand jury to investigate the police department. Wanting to avoid such an inspection, Chief Lanford ordered his men to stop sharing details of the case with the press.

Dorsey got the testimony he wanted from some witnesses by simply offering a willing ear. This tactic appealed particularly to the factory girls, who were excited at the idea that all of Atlanta would listen to them. It also worked with some of the factory boys. Another witness told Dorsey that sixteen-year-old Willie Turner had seen Leo Frank and Mary Phagan having a conversation together that suggested the man was making advances and the girl was afraid of him.

Although Willie believed that the girl and his boss had run into each other accidentally, Dorsey repeatedly had him act out the encounter to emphasize that Mary backed away from the superintendent. He tried to persuade the boy to testify that Leo Frank’s hands were extended, as if he were trying to grab Mary, although Willie would only go so far in this direction.

When Dorsey couldn’t persuade witnesses to testify the way he wanted, he was not above bribing or coercing them. Sixteen-year-old Dewey Hewell, who had worked at the pencil factory, experienced

both. Dorsey tracked her down at the Home of the Good Shepherd in Cincinnati, Ohio, a group home for unwed mothers where Dewey was in custody. Dorsey contacted Police Matron Mary Bohnefield and informed her that he believed Dewey could testify about Leo's interest in Mary. Dewey later stated in a sworn deposition that she had been afraid of Bohnefield "and that she was afraid to refuse to testify exactly the way the Police Matron wanted her to." She said that she was promised that she would be released from the group home if she testified against Leo.

At the same time Dorsey was preparing his witnesses, Leo's lawyers were preparing their defense. Reuben Arnold had joined the team of Luther Rosser and Herbert Haas. An expert in evaluating medical evidence and a smooth talker with an encyclopedic knowledge of the law, Arnold balanced Rosser's vigorous oratory style. The first thing the legal team did was instruct Leo to keep silent. They didn't want him giving interviews—perhaps because he was so cool and detail-oriented and that attitude hadn't made a good impression on reporters or perhaps because they simply wanted to keep their strategy to themselves. Either way, the press didn't like it. Reporters took to calling Leo "the silent man in the Tower," referring to his cell in the tower of the station house.

Arnold's and Rosser's strategy was to prove Leo's innocence by convincing the jury that Jim Conley was solely responsible for the murder and to undercut all claims of sexual interest in Mary by presenting Conley's motive as greed. They intended to argue that Conley tried to take the money from her pay envelope and when she resisted, he killed her for it. The attorneys found witnesses of their own at the factory to support this contention. Mary Pirk, forelady in the polishing department,



Attorney Reuben Arnold during Leo Frank's trial in 1913.

told them, “[Jim Conley] borrowed money from me every week. Sometimes he wouldn’t pay me, and I would come in the office and get it.”

Other factory girls would confirm Mary Pirk’s testimony about Conley’s habit of borrowing money from them. They also said that he behaved strangely on the Monday after the murder. And police had never found Mary’s silver mesh purse, further evidence that her murder had been the result of robbery gone bad.

The defense also had a witness who claimed that Jim Conley had confessed to the murder. William Mincey was an insurance agent for American Life. He was also a white man, so the attorneys were confident that his race would make him believable, especially to the all-white jury they expected to get. After watching the Confederate Memorial Day parade, Mincey had gone back to selling insurance door to door. He’d seen a man who identified himself as Jim Conley and tried to sell the man some insurance, but Conley was nervous and almost incoherent. He told Mincey to come back the following week, but when Mincey pressed him, Conley said he was in trouble and expected to be in jail soon. The insurance agent asked what for, and Conley replied, “Murder, I killed a girl today.”

Mincey asked why, and Conley got angry. “That is for me to know and you to find out,” he snapped. Mincey tried to get more information and started to come closer, offering to write the man’s insurance application right then. But Conley jumped up and backed away, saying, “I have killed one today and I don’t want to kill another.”

When he read about Mary’s murder, Mincey went to the factory, but things were so hectic that day watchman Holloway turned him away. Mincey said he’d gone to the police station right after Conley had been arrested and been allowed to see him, but Conley claimed he didn’t remember Mincey or the conversation. Then Mincey wrote to Dorsey about the meeting but never got a reply, so he contacted Rosser. The defense team found several women who had heard the men’s conversation on Confederate Memorial Day and agreed to testify.

Leo's attorneys also planned to use medical experts to show that Mary Phagan could well have been killed later than Dorsey claimed, while Leo was outside the factory building. At this point, Arnold and Rosser felt well prepared to go to trial. They believed that all Dorsey had was a distorted timeline and an eyewitness who was lying to protect himself. The defense was confident that a jury would compare the compelling evidence against Jim Conley with the weak circumstantial case against Leo and quickly declare him not guilty.

"ISN'T THIS A LARK?"

THE TRIAL OPENS

As July 1913 drew to a close, many of the teenage factory employees were in a state of thrilled anxiety. Would Hugh Dorsey call them to the stand? Would all of Atlanta hear what they could tell?

Temperatures topped one hundred degrees daily that July, and it looked as if heat might postpone the trial still longer. (Air conditioners were not yet used widely.) But Judge Leonard Roan wanted to proceed. Normally the trial would have been held in the Thrower Building because the new county courthouse was still under construction. But authorities anticipated large crowds for this trial. So they created a courtroom that would seat about 250 people out of a big room on the first floor of the old city hall. They installed fans and extra chairs beneath the electric chandeliers hanging from the tin ceiling and also a ventilating device called an ozonator. Unfortunately, the ozonator didn't cool the room very well, so Judge Roan ordered the windows opened to bring in fresh air.

The open windows also brought the overflow crowd that had gathered in the streets into the room. And while the judge could control the behavior of the people seated in his packed courtroom, he could do nothing about the crowd outside. People cheered, booed, and shouted at the witnesses, the lawyers, the judge, and even the jury. They threatened, "Hang that Jew, or we'll hang you!" Although the defense protested, Judge Roan simply asked the sheriff to find out who was making the noise. That did nothing to stop the crowd's commentary on the proceedings.

Passions ran high in the courtroom as well. A Georgia general assemblyman who attended part of the trial recalled, "There was a thirst for the blood of Mary Phagan's murderer. So intense was this feeling that the very atmosphere in and about the courthouse was charged with the sulphurous fumes of anger. I was in the courthouse several times during the trial, and the spirit, the feeling, the thought of the crowd affected me. Without reason, I found myself prejudiced against Frank. Prejudiced, not from facts and testimony, but by popular belief and hostile feeling manifested by the crowd."

Witnesses waited to testify in an upstairs room above the courtroom. The *Atlanta Journal* reported the crowd could see the factory girls at the open windows, laughing and chattering with one another, "Are you subpoenaed? Isn't this a lark?"

For those in the courtroom, it was anything but a lark. Hugh Dorsey knew he had to win this trial or say good-bye to his ambitions of climbing to higher political position. Judge Roan knew that this high-profile case would demand his careful rulings on the evidence or the verdict might be overturned on appeal. The twelve men on the jury knew from the crowd noise that all of Atlanta would be paying attention to their decision.





Prosecutor Hugh Dorsey (standing) questions Newt Lee (sitting on witness stand). Left inset: Judge Leonard S. Roan at the time of Leo Frank's trial. Right inset: Leo Frank looks on.



And Leo Frank, sitting at the defense table with his wife and his mother beside him, knew that his attorneys had to prove his innocence or he would lose his life. The penalty for murder in 1913 Georgia was to be hanged by the neck until dead. Despite this terrible prospect, Leo seemed calm and collected as he entered the courtroom.

"I am glad the trial is about to begin after this long wait," he declared. "I have no fear. I am not only innocent of this crime, but I am innocent of any knowledge of it." For her part, Lucille sat close to her husband and glared steadily at the prosecutor with fury as he opened his case.

Hugh Dorsey put Mary Phagan's mother on the stand first, reminding the jury that Mary had been a pretty, innocent young girl forced to work in a factory. Then he called George Epps, who boyishly leaped to the stand, barefoot. The judge ruled that George couldn't repeat what he claimed Mary told him on the streetcar, but George testified to the time he met Mary and the time he saw her go into the factory. When asked what time he'd finished selling his papers, he said he wasn't sure because he told time by the sun, and the sun had gone down by then.

That statement gave Luther Rosser his cue for cross-examination—it had been a gray, rainy day that Saturday, with no sun. This would be his technique throughout the trial: to trip up witnesses on technical errors, implying their whole evidence was a lie because of those small lies. It was a reasonable strategy, but it was a calculated, rational approach that didn't take into account the passion of the crowd—or the passion of the jury. In contrast, Dorsey understood that the way to a jury's heart was to tell a story they could believe, because a convincing story cannot be refuted by fact. He wove a powerful tale that caught up both the jury and the crowd in its emotion. Rosser tried to make them think about the facts, but it was very difficult to make reason outweigh emotion.

Newt Lee testified about finding the body and notifying the police—and about not being able to reach Leo Frank. He was followed on Tuesday and Wednesday by a string of police witnesses, including Pinkerton detective Scott and culminating in Detective John Black. Black, especially, presented all Leo's actions in as suspicious a light as possible, particularly his unwillingness to help with the investigation or even speak to police without his lawyers present after his arrest.

Leo listened, his impassive expression masking his inner outrage. He knew he'd had good reason not to talk to detectives. "I knew that

there would not be an action so trifling, that there was not an action so natural but that they would distort and twist it to be used against me,” he later explained, “and that there was not a word that I could utter that they would not deform and distort and use against me.”

Detective Black’s testimony was specific and detailed under the direct examination by Solicitor General Dorsey, but it dissolved into a repetition of “I don’t know” when Luther Rosser took over on cross-examination. This prompted Rosser to demand at one point, “Why is it you recollect so well some things, and fail so badly in others?” Black had no answer.

On Thursday fourteen-year-old Monteen Stover testified that she had come to the factory on April 26 to get her pay and that Leo Frank was not in his office, contradicting Leo’s statement that he worked on paperwork after he paid Mary. Rosser was careful in his cross-examination of the girl, getting her to admit that she might not have seen Leo since the open safe door blocked her view. But he didn’t want to appear bullying, and his polite questions couldn’t shake her insistence that she hadn’t paid attention to furniture or doors because she was looking for a person, not an object.

Robert Barrett testified about the hair and blood he had found. Then the chemist, Dr. Claude Smith, testified that the chips of wood from the floor of the metal room were indeed stained with blood, although Rosser got him to admit that he couldn’t identify the blood and it “might have come from a mouse.”

More medical evidence followed on Friday, with the appearance of Dr. Henry Harris, who had performed the autopsy on Mary Phagan. He testified that the blows to her face looked as if they had been made with a fist and that the condition of the bread and cabbage in her stomach indicated she had been killed only thirty or forty-five minutes after eating. Since Mary had eaten shortly before leaving home, that would put her time of death just after she entered the factory for her pay.

But Dr. Harris’s most surprising testimony was still to come. “I made an examination of the privates of Mary Phagan,” he explained. “I found no spermatozoa. On the walls of the vagina there was evidence of violence of some kind . . . The dilation of the blood

vessels indicated to me that the injury had been made in the vagina some little time before death. Perhaps ten to fifteen minutes."

Dr. Harris had just stated that Mary Phagan appeared to have been raped by some object that did not leave any semen. In so doing, he laid the groundwork for Dorsey's plan to build on this implication to accuse Leo of being a pervert.

But before the defense could cross-examine Dr. Harris, he complained he was too ill to continue, and Judge Roan excused him on the grounds that he would return as soon as he was able. When Dr. Harris did return to complete his testimony, he focused solely on the time of death, and Arnold was unable to shake the doctor's claims during his cross-examination.

Setting up the main case against Leo, the prosecution proceeded to call a witness who had seen Jim Conley in the factory lobby the day Mary was killed. Dorsey ended the day by calling Albert McKnight. Even though his wife, Minola, had retracted her earlier statement, McKnight was still willing to testify in hopes of getting some of the reward money that had as yet gone unpaid. On cross-examination Rosser forced McKnight to reveal some of the details of his wife's mistreatment at the hands of the police, but he couldn't trip the man up on any of his own testimony.

Sixteen-year-old Helen Ferguson eagerly took the stand on Saturday morning, wearing a pretty white dress with a bow at the neck. She testified that she had tried to pick up her close friend Mary's pay from Leo Frank on Friday, but he wouldn't give it to her. Helen told the jury that the superintendent said that Mary would get it on Saturday, implying that he intended to see the girl then.

Dr. Hurt, the Fulton County medical examiner, reinforced Dr. Harris's testimony about the blows to Mary's face but was less convincing about the charge of rape, stating, "I discovered no violence to the [genital] parts." Reuben Arnold handled the cross-examination, getting the doctor to concede that the blood the police noted on her thighs might have simply been the girl's menstrual period.

The trial almost ended at that point. After a break, Judge Roan came back into the courtroom carrying a copy of the *Georgian*. Jurors could clearly see the bright red headline about the case:

“STATE ADDS LINKS TO CHAIN.” The defense called for a mistrial on the grounds that the headline could bias the jury and lead to an unfair verdict. Instead, the judge instructed the jury to disregard the headline. Even though the defense didn’t feel this was adequate, they finally accepted the ruling since they expected to win the case.

While the court was recessed for Sunday, Jim Conley’s attorney, William Smith, prepared his client to testify the next day. He arranged for a shave and a haircut for Conley, and police officers cleaned the man up. Conley came into court on Monday morning in a new suit, looking tidy and respectable. He fleshed out his earlier (third) affidavit on the stand, introducing a code of stumps by which he was supposed to warn his boss that someone was coming. He also described previous encounters between Leo Frank and other girls on other Saturdays, including details of witnessing oral sex—an act which was considered a particularly degrading perversion at that time.

When he got to April 26, Conley stated that Frank had told him, “I wanted to be with the little girl, and she refused me, and I struck her and I guess I struck her too hard and she fell and hit her head against something, and I don’t know how bad she got hurt. Of course, you know I ain’t built like other men.”

Although both Dorsey and his witnesses took care never to be more specific, 1913 listeners understood the unspoken implications of engaging in oral sex and not being “built like other men.” The prosecution was insinuating that because Leo was Jewish, his genitals were deformed to the point that he could not enjoy conventional vaginal intercourse and could only experience sexual pleasure in ways that were then considered perverted.

This false, prejudiced idea had been widely held by anti-Semites for centuries, perhaps fueled by misunderstandings about the Jewish tradition of circumcision. But no one put the accusation into plain words at the trial, so it was impossible for Leo’s lawyers to refute as a complete fabrication born out of ignorance and bigotry.

Having planted the seeds of Leo’s perversion leading to a deliberate sexual attack on Mary, Conley went on to describe the cover-up. He said he had carried Mary’s body onto the elevator and down to the basement with Leo’s help and then wrote the letters that Leo dictated.

Rosser cross-examined Conley Monday afternoon and all day Tuesday but could not shake him in his story beyond getting him to admit he had lied to the police in the beginning. Conley seemed to enjoy answering the attorney's questions. At one point, Rosser challenged the size of a piece of cloth that Conley claimed to have used in moving Mary's body:

“Well, what do you call two feet?”

“This is what I call two feet,” cried Conley, putting the toe of his right shoe against the heel of his left and lifting them high off the floor.

Jim Conley's flippant answers did not weaken his credibility for the all-white jury. Nor did his admission that he had initially lied to the police. In 1913 most juries, particularly in the South, assumed that a black man was less likely to tell the truth than a white man. Having him admit that he had lied but was now telling the truth actually made him more believable, as did his cockiness.

Realizing that Conley had seriously damaged Leo's case, the defense made a motion to exclude parts of his testimony. They wanted the judge to instruct the jury to disregard what Conley had said about watching for anyone who might interrupt Leo when he was with a girl and also his testimony that Leo was not “built like other men.” Dorsey insisted that the evidence went to the heart of who had killed Mary and why. He pointed out that if the defense had wanted to object, they should have done it immediately, not after they had cross-examined Conley unsuccessfully for over eight hours.

After a spirited argument, during which the jury was out of the room, Judge Roan ruled that Jim Conley's testimony was admissible. The people in the courtroom applauded loudly, and the mob in the streets erupted in cheers. Arnold again asked for a mistrial, stating that crowd reaction prejudiced their case. Judge Roan denied the motion on the grounds that the jury was not present and therefore had not heard it. But of course, the jury could hear the cheers and applause. Anyone in the building could hear the mob through the open windows.

The prosecution's last witness was C. Brutus Dalton, a carpenter who testified that Jim Conley had kept watch for both Leo and

Dalton himself while they met with women in Leo's office and in the factory basement. On cross-examination, Rosser tripped up Dalton in several lies and got him to admit that he was a convict. Nevertheless, when the prosecution rested, the *Georgian* reported, "One by one the prosecutor has forged the links in the chain that he maintains fixes the guilt of the Phagan murder on Leo Frank and Leo Frank alone." Leo's defense team faced a much harder task in the second half of the trial than they'd anticipated.

“THERE CAN BE BUT ONE VERDICT”

THE DEFENSE RESTS

While the job of the prosecution was to present evidence to convict the accused, the job of the defense was to disprove that evidence or at least convince the jury that there was reasonable doubt that their client could be guilty. Leo's defense started strong, presenting Dr. Leroy Childs, who described how hard cabbage was to digest. Dr. Childs testified that Mary had probably been killed more than thirty or forty-five minutes after she ate, refuting Dr. Harris's claim. This medical testimony rendered the prosecution's entire timeline invalid.

Next, the defense recalled Pinkerton detective Harry Scott and used his reluctant testimony to show the jury how Scott and the police had coached Jim Conley. While this was a technical victory, it had none of the emotional impact of Conley's original testimony about Leo's alleged sexual encounters and perversions.

Rosser and Arnold continued to present reasoned testimony that refuted each detail of the prosecution's evidence. One of the girls that Dalton had accused of going up to Leo's office with him testified that she had never done so. The motorman who had driven the streetcar that took Mary to the factory on the day of her death testified that

no one had sat beside her or talked to her. This refuted George Epps's testimony that he had ridden with Mary and his earlier statements that she'd told him she was afraid of Leo Frank. And the conductor testified that Mary had gotten off the streetcar at 12:10. This contradicted Jim Conley's testimony about when the girl had arrived and made Monteen Stover's testimony about Leo not being in his office when she was there looking for him between 12:05 and 12:10 irrelevant. The prosecution's timeline was crumbling.

But the defense's performance in drawing such significant information out of their witnesses was too cool and collected to convince the jury. The only impassioned moments were when Hugh Dorsey leaped to his feet to cross-examine witnesses, scoring only minor points but making them sound hugely impressive. The defense had not been able to track down Will Green, who could testify that Conley had been the real killer, and for reasons they never explained, they chose not to put William Mincey on the stand to testify that Conley had told him he had killed a girl on Confederate Memorial Day. Without eyewitnesses of their own to disprove Conley's eyewitness testimony, the defense failed to make a strong impact on either the crowd or the jury.

Other witnesses testified about the layout of the rooms and floors in the factory, about the door that had been found broken in the basement after the murder, and about the habits of other employees in coming in and out of the factory on Saturdays. Assistant Superintendent Herbert Schiff testified that Harry Scott, the Pinkerton agent hired by the National Pencil Company, had stated explicitly that the agency wanted Frank found guilty and had been working in collusion with the police the whole time.

Schiff also gave detailed testimony about Jim Conley's tendency to lie, saying that the company kept him on only because it was hard to find janitors who would show up for work reliably. Then Schiff compared the amount and quality of the paperwork Leo had completed on April 26 with the reports he had prepared on previous Saturdays and said that the work was identical. He said this indicated that Leo had been in a normal frame of mind and working as usual that day—making it seem unlikely that he killed someone in the

DEFENDANT'S EXHIBIT 7.

Three pencil sheets (the last two lines of which are in Frank's handwriting), part of data for financial sheet.

FACTORY RECORD

NATIONAL PENCIL COMPANY, Atlanta, Ga.

DATE	PENCIL STOCK										Week Ending	April 17, 1913		
	10 Exs	20 Exs	30 Exs	40 Exs	Jobs	135Ex	120Ex	130Ex	120 Ex SPL	140Ex	155 N Tip	156a N Tip		
April 11	204		28			14	46	13 1/2					6 1/2	
12	32		65				64	40						
14	19	21	42			61	36							
15	53					13					13	8		
16		38	x	3							8	10 1/2		
17	100	10	38	524	10	10	4	7 1/2			22 1/2	15		14
TOTAL	100	318	94	734	138	10	24	61	163	53 1/2	7 1/2	47		15 1/2 45
April 18	17	58	18				25			60		2 1/2		29 1/2 45
19	53	69					66	99 1/2			33			9 1/2
21	16	121	7	274		53 1/2	46							35 1/2
22	94	11				83 1/2	4 1/2	1			18			5
23	78	3				5	114 1/2				24			31 1/2
24	34	20	517				36							24
TOTAL	86	454	59	791		5	53 1/2	371	104	1	105		2 1/2	140 1/2 52 1/2
Stock End Last Week														
Total Stock End This Week														
TOTAL Stock End This Week														

This factory record from the National Pencil Company was offered into evidence by Leo Frank's defense team. Frank's lawyers argued that Frank would not have returned to complicated paperwork if he had just raped and murdered Mary Phagan.

midst of his weekend bookkeeping and was then able to remain calm and routine at the job.

Fourteen-year-old Magnolia Kennedy refuted Helen Ferguson's claim that Leo had refused to give her Mary's pay so he could see the girl on Saturday. Magnolia confirmed that Mary had not been present on payday, and testified that she (Magnolia) was right behind Helen when the conversation allegedly took place. Not only did Helen not ask for Mary's money at all, but it was Herbert Schiff who paid the workers that day, not Leo Frank, so there was no possible way that Leo could have attempted to arrange a meeting with Mary on Saturday.

Two of the office boys who had worked at the factory also testified for the defense: fourteen-year-old Alonzo Mann and fifteen-year-old Philip Chambers. Alonzo shyly testified in a low voice that he had never seen C. Brutus Dalton going up to the superintendent's office with women or any women going into the superintendent's office at all, but he appeared nervous. A reporter wrote, "He was frightened by his experience in court, and the stenographer [court reporter] had difficulty in hearing his answers."

Philip Chambers, on the other hand, was a confident witness, firmly insisting that he had never seen the superintendent acting familiar with any of the women in the factory. Dorsey only cross-examined Alonzo briefly, not wanting to make the court feel sympathetic toward the already anxious witness, but he went after Philip with vigor. Dorsey not only challenged the boy about Leo's alleged relationships with female employees but implied that the superintendent had made improper advances to Philip himself. The implication that Leo was a pedophile who had tried to have homosexual relations with his young male employees, as well as depraved sexual relations with his young female employees, was even more horrifying to 1913 society than it would be today.

Philip flatly denied the suggestion, and Arnold objected furiously, announcing, "If courts were run this way it could be brought against any member of the community—you, me, or the jury. No man can get a fair showing against such vile insinuations. If this comes up again, I will be tempted to move for a new trial."

Judge Roan had the cross-examination erased from the record, but the jurors had heard it, just as they had heard the crowd's response to the decision not to exclude Jim Conley's testimony. Jurors are required to disregard any information that the judge orders them not to consider, but the defense feared that would be impossible in such an emotionally charged atmosphere.

Throughout the third week of the trial, the defense continued to call witnesses who systematically disproved the prosecution's case. Dorsey refrained from cross-examining some of the women witnesses, but not all. He attacked Minola McKnight after she testified about being forced by police to sign the false affidavit. He also criticized Leo's mother-in-law, arguing that Mrs. Selig should have been more concerned about Mary's murder in her son-in-law's factory the Sunday the body was found. Dorsey shrugged off the fact that Mrs. Selig had been ill and had gone in for an operation the following day. He wanted the jury to believe that this Jewish high-society family couldn't care less about the death of some working girl they didn't know.

The defense would call several more witnesses from the factory to support their contention that Jim Conley had taken Mary into the

basement and killed her there, but at this point, they made a risky decision. They decided to call character witnesses, knowing that once they raised the subject of Leo's character, they would open the door for the prosecution to call witnesses to disparage that character.

It was one thing for a witness to testify that he had seen Leo with Mary or any other girl. The jury could believe him, or they could decide he was lying. It was a different thing—and much more damaging—for a witness or a lawyer to claim that Leo was the sort of man who took advantage of young girls all the time. That type of character attack could only be made after the defense raised the issue of character.

It was a risky strategy. But Arnold and Rosser could see that the technical battle they were winning was not impressing the jury. Perhaps if they could make the jury see Leo through friends and family as a real person, they could win the jury's sympathy and Leo's acquittal.

Several of Leo's friends from Cornell and the Pratt Institute came to Atlanta to testify that Leo's character was excellent. Then John Ashley Jones, the New York Life Insurance Company representative who had insured the superintendent, testified that Leo was not only in excellent physical condition but also that his character was good. That was Dorsey's cue to go on the offensive. In his cross-examination, Dorsey demanded of Jones, "Then you didn't hear that he took girls in his lap down there at the factory?" Although Arnold immediately objected, Judge Roan overruled him on the grounds that the defense had introduced the issue of character, so the prosecution could now challenge the defendant's character.

Dorsey pressed on, asking, "You never heard that Frank went to Druid Hills with a little girl, did you?" and "Didn't you hear about twelve months ago of Frank kissing girls and playing with the nipples of their breasts?"

"No, nor you either," Leo's mother shouted, leaping to her feet and shaking her finger furiously at the solicitor general in outrage. She was escorted out of the courtroom, sobbing, and Dorsey pressed on, voicing every rumor that had flown around Atlanta during the past three and a half months.

estate, had a mortgage on their ten-thousand-dollar home, and lived on the interest income from twenty thousand dollars. While that didn't sound like a wealthy estate to a New Yorker, it sounded like considerable wealth to the poor workers of Atlanta in the crowd and to many of the jurors.

The defense rested with Leo Frank on Monday afternoon. In 1913 Georgia, the accused could not give sworn testimony and be cross-examined, but he could speak to the court. Leo did so for four hours. His intention was to speak calmly and reasonably, giving the jury the facts of the case as dispassionately as he could. To help jurors see how seriously he took his work in the factory, Leo brought in a display showing the variety of pencils the National Pencil Company manufactured. However, Dorsey objected on the grounds that the pencil display had not been introduced as evidence. Leo went on to try to describe his work without his visual aids.

Puzzled by his careful discussion of pencil production and unmoved by his fascination with the details of the invoicing report he had been preparing on April 26, the jury waited to hear Leo sound as passionate as Jim Conley. They were stunned that he had so little to say about Mary Phagan—even though Leo felt he could not have said more since he hadn't known the girl and had only seen her briefly on the day she died.

But in the end, Leo found the eloquence the jury had been waiting to hear:

The statement of the negro Conley is a tissue of lies from first to last. I know nothing whatever of the cause of the death of Mary Phagan and Conley's statement as to his coming up and helping me dispose of the body, or that I had anything to do with her or to do with him that day is a monstrous lie. . . .

The story as to women coming into the factory with me for immoral purposes is a base lie and the few occasions that he claims to have seen me in indecent positions with women is a lie so vile that I have no language with which to fitly denounce it. . . .

Gentlemen, some newspaper men have called me "the silent man in the tower," and I have kept my silence and my counsel advisedly, until the proper time and place. The time is now; the place is here; and I have told you the truth, the whole truth.

Many people in the courtroom were moved by Leo's closing, but easily as many were chilled by the earlier part of his statement and by the fact that he was more excited by pencil manufacture than by the death of one of his workers.

After the defense rested, the prosecution had the opportunity to call rebuttal witnesses. Dorsey called a group of factory girls to challenge Leo's character with further claims of sexual impropriety. Rosser was careful in his cross-examination, not wanting to appear to bully the girls. He even chose not to cross-examine some of them. To the jury, that suggested the defense accepted the girls' testimony as truth, and Dorsey emphasized that interpretation in his closing argument, crying, "They didn't dare to do it."

Arnold and Rosser each spoke in closing arguments for the defense, and each was effective in tearing apart Dorsey's web of circumstantial evidence. Arnold clearly pointed out the errors in Jim Conley's testimony and showed how the defense had refuted the other prosecution witnesses. He contended that Dorsey "almost changed the course of time in an effort to get Frank convicted," and closed by telling the jury that the state's case was built solely on "prejudice and perjury. I have never seen such malice, such personal hatred in all my life."

Rosser attacked the investigation, detailing how police had browbeaten their witnesses. He concluded by attacking the prosecution for teaching Jim Conley the story to tell in court and calling the man "a trained parrot." He closed by saying, "I don't believe any man, no matter what his race, ought to be tried under such testimony. I might [hang a man on such testimony] in the daytime, but at night when things got quiet I would be ashamed of myself."

Hugh Dorsey's closing argument for the prosecution was masterful. He spoke for nine hours over three days, presenting Jim Conley as a simple worker who had admitted to being paid off by a powerful white

Jew to help hide his boss's crime. Dorsey praised the workers and the good country people who had come forward to denounce the fiend. At the end, he turned to Leo and attacked him directly:

"You assaulted her, and she resisted. She wouldn't yield. You struck her and you ravished her and she was unconscious."

Mary's mother was seated at the prosecution table with her other daughter, and when she heard this, she screamed and buried her face in the girl's arms. Dorsey continued:

"You tell me she wasn't ravished? I ask you to look at the blood—you tell me that little child wasn't ravished? I ask you to look at the drawers, that were torn. I ask you to look at the blood on the drawers. . . ."

Lucille, seated just behind Leo, sobbed. Dorsey faced her husband and said:

You gagged her, and then quickly you tipped up to the front, where you knew there was a cord, and you got the cord and in order to save your reputation which you had among the members of the B'nai Brith, in order to save, not your character, because you never had it, but in order to save the reputation with [the Jewish community] and your kinfolks in Brooklyn, rich and poor, and in Athens, then it was that you got the cord and fixed the little girl whom you'd assaulted, who wouldn't yield to your proposals, to save your reputation, because dead people tell no tales.

Dorsey completed his closing argument on Monday, August 25, his voice hoarse and tiring as he told the jury that Mary Phagan

died a noble death, not a blot on her name. She died because she wouldn't yield her virtue to the demands of her superintendent.

Your Honor, I have done my duty. . . . And I predict, may it please Your Honor, that under the law that you give in charge and under the honest opinion of the jury of the evidence produced, there can be but one verdict, and that is: We the jury find the defendant, Leo M. Frank, guilty!

TWELVE JURORS WITH WHOM LEO M. FRANK'S FATE RESTS

M. S. WOODWARD.

W. M. JEFFRIES.

M. JOHNSON.

F. E. WINBURN.

C. J. BOSSHARDT.

W. F. MEDICALP.



J. F. HIGDON.

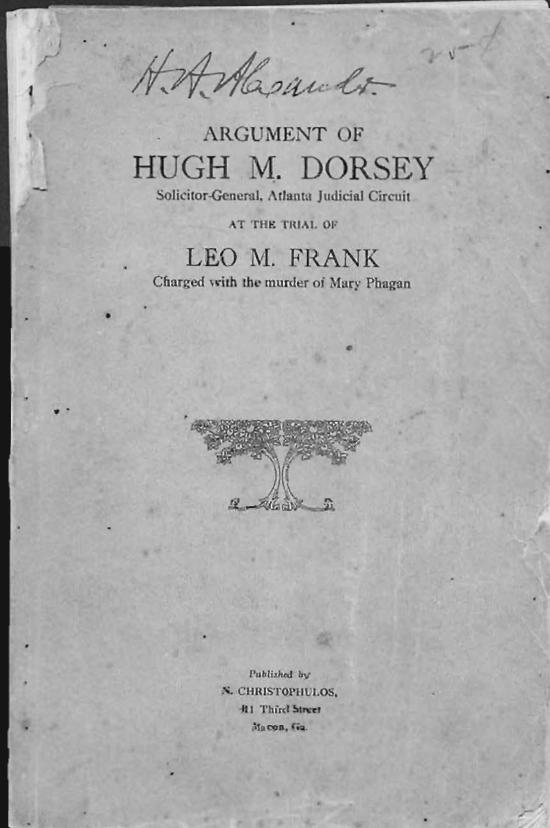
A. L. WISBEY.

D. TOWNSEND.

F. V. L. SMITH.

A. H. HENSLKE.

J. T. OSBURN.



Above: A newspaper photo of the members of the Leo Frank jury.

Left: Hugh Dorsey's closing argument in the case lasted nine hours. It was published as a book the following year.

Hugh Dorsey had timed it perfectly. As he spoke the word *guilty*, nearby church bells rang out the noon hour. Dorsey repeated, "Guilty! Guilty! Guilty!" as the twelve chimes sounded, each chime a "guilty" charge for each juror who was about to retire to consider his verdict.

The jury left the old city hall for lunch, walking through the streets packed with a crowd of five thousand people demanding Leo Frank's blood. When they returned from their meal, the jury took only an hour and forty-five minutes and two ballots to reach a verdict. Fearful that mob violence would break out, Judge Roan cleared the courtroom. He also asked that Leo and his attorneys not be present when the verdict was read. Although this technically denied the accused due process of law, the judge feared that Leo and his lawyers would be in physical danger if the jury acquitted him, and Rosser and Arnold agreed to the request.

Jury foreman Fred Winburn faced the judge with only Hugh Dorsey in the courtroom and announced, his voice unsteady, that Leo Frank was found guilty of the murder of Mary Phagan.

When he received the news, Leo gasped, "My God! Even the jury was influenced by mob law. I am as innocent as I was a year ago." Lucille sobbed bitterly. The *Constitution* reported she "cuddled closer to her boyish-looking husband. . . . He stroked her head and pleaded with her to be brave." No one other than Leo and Lucille's immediate family knew at this time that Lucille had miscarried and lost their child. She must have thought at this moment that she was about to lose her husband and any chance for their future children, as well.

Hugh Dorsey came out of the building and only walked a few steps before members of the crowd hoisted him to their shoulders and carried him, cheering loudly. The following week, Dorsey was the guest of honor at a celebration barbecue that also paid tribute to all twelve members of the jury in attendance.

Jim Conley would be found guilty of accessory after the fact to Mary Phagan's murder and would be sentenced to serve one year on the chain gang. But Leo Frank was sentenced to be hanged on October 10, 1913.

“THE ASSENT OF A TERRORIZED JURY”

A NEW TRIAL?

Leo wrote from prison to John Gould, a classmate from Cornell, “In April 1913, outrageous trouble overtook me like a bolt from the blue. The charge was so preposterous that at first I treated the matter disdainfully, it was all so foreign and far removed from my most fantastic conception of thought.” Now that he had been convicted of murder, Leo was treating the matter very seriously indeed. Leo, Lucille, and his lawyers worked together to plan a course of action to either get a new trial or to reverse the jury’s decision.

Despite the urgency of the situation, Rosser and Arnold agreed to a request from the prosecution not to appeal on the grounds that Leo wasn’t in court when the verdict was read. The attorneys were confident that they had more than enough grounds for appeal without this one. Why they agreed to anything Hugh Dorsey asked, however, has mystified legal scholars.

In 1913 Georgia, a capital murder case could only be appealed based on errors in law and the motion for appeal had to go to the original judge who had presided over the trial. Rosser and Arnold found over one hundred points of law to appeal, including their argument that Conley’s testimony should have been ruled inadmissible, the crowd’s influence on the jury, and charges that several jurors were anti-Semitic and had lied to get on the jury in order to convict Frank. Although the appeal delayed Leo’s execution,

Judge Roan denied the motion for a new trial on October 31, stating that the legal issues were clear. He admitted, “With all the thought I have put on this case, I am not thoroughly convinced that Frank is guilty or innocent.” But Roan then stated, “The jury was convinced. There is no room to doubt that. I feel it is my duty to order that the motion for a new trial be overruled.”

Rosser announced that they would appeal to the Georgia Supreme Court on the basis of Judge Roan’s admission of doubt. Leo waited in prison for their decision, but on February 17, 1914, the Georgia Supreme Court justices ruled 4–2 that the trial judge was the only one who could decide whether or not the crowd had prevented a fair trial. They stated that Judge Roan’s admission of doubt wasn’t enough to make them overturn the verdict.

At the hearing to set a new date for execution, Leo again insisted that he was innocent, blaming his conviction on rumors instead of facts. “Not only were these stories circulated in the street, but to the shame of our community be it said that these vile insinuations crept into my very trial in the courtroom, creeping in insidiously, like a thief in the night. The virus of these damning insinuations entered the minds of the twelve men and stole away their judicial frame of mind and their moral courage.” Leo’s new date of execution was set for April 17, 1914—his thirtieth birthday.

Leo decided that his lawyers had not been serving him well and hired new attorneys. The cost of his defense was mounting far beyond what he and the owners of the National Pencil Company could afford. But word of his case had reached the ears of the American Jewish Committee by means of letters and a series of seven leaflets that Leo handwrote in his cell and then gave to Lucille to type for him. The leaflets explored the contradictions in the solicitor general’s case and showed the impossibility of reconciling Conley’s story with the nineteen other timeline witnesses, whose testimony fit “together like pieces of mosaic.” Of those nineteen witnesses, only ten were for the defense—the other nine were the State of Georgia’s own witnesses. Leo urged readers, “Think it over, there is no excuse for a mistake to be made, with open eyes, by an individual or a community.”

Lasker neglected his own business to personally direct new investigators and detectives and to help advise Leo's attorneys. According to Lasker's biographer, John Gunther, "Every instinct he had for justice and fair play, for racial tolerance, for dignity in the courts and good citizenship, was aroused."

The first thing Leo's new team did was make two motions before the Fulton County Superior Court in April 1914. One was an appeal on the basis that Leo had been denied due process of law because he was not permitted to be present in court when the verdict was read. They felt the promise the other attorneys had made to Dorsey didn't apply to them. They also made an extraordinary motion for a new trial on the basis of new evidence. (An extraordinary motion was the only way to get a Georgia court to consider voiding a previous conviction and granting a new trial.)

The new evidence was compelling. On February 20, the *Atlanta Journal* had published the news that Dr. Harris, who had performed Mary's autopsy, had known before the trial that the hair found on the lathe was not Mary's hair. He had told Dorsey, and the solicitor general had neither informed the defense of this evidence that would have cleared Leo nor allowed Dr. Harris to inform the court. Dorsey had simply gone ahead with his contention that Robert Barrett had found Mary Phagan's hair on the second floor, placing the scene of her murder near Leo's office, knowing that the evidence did not support this.

Henry Alexander, a former Georgia general assemblyman, joined the defense team. An established attorney who had prepared the documents to found the Atlanta Art Association (now the leading museum of art in the southeastern United States), Alexander brought an air of southern gentility to the defense. Although a member of Atlanta's Jewish community, Alexander was equally well respected by the city's Gentile population. In fact, at the University of Georgia, he had been Hugh Dorsey's roommate.

Alexander analyzed the letters found beside Mary's body for the defense. He pointed out that the old date on the order pad on which one letter was written suggested that the pad had originated in the basement, where old supplies were stored, not on the second floor,



Leo Frank's appeal attracted new allies to his case, including Jewish advertising magnate Albert Lasker (*left*). These allies helped Leo hire a new defense team, including Henry Alexander (*right*).

where current supplies were kept and where Jim Conley claimed Leo had dictated the letters to him.

More important, however, Alexander argued that the term “night witch” in the line “he said he wood love me land down play like the night witch did it” did not refer to “night watchman” as everyone had supposed. It actually referred to a specific haunt, or evil spirit, that many African American people believed in. The Baptist minister of Mary Phagan’s own church confirmed this interpretation, saying he asked his black servant about “night witch” and she told him, “When the children cry out in their sleep at night, it means that the night witches are riding them, and if you don’t go and wake them up, they will be found next morning strangled to death, with a cord around their necks.” Alexander insisted that, given Leo’s cultural background, there was no way Leo could have known this story to use the phrase in his dictation, as Dorsey had claimed.

Supporting Alexander’s findings, Leo’s lawyers discovered letters that Conley had written while he was in jail to a girl named Annie



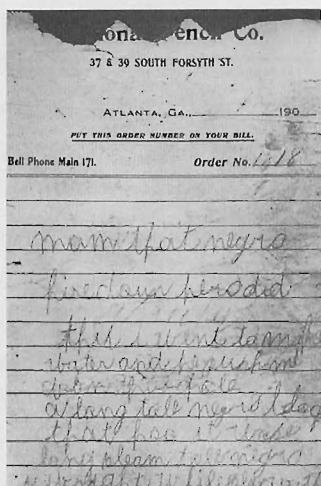
Some Facts
about
The Murder Notes
in the
Phagan Case

HENRY A. ALEXANDER

Above: Henry Alexander brought a measure of southern credibility to Frank's defense. The photo above shows him in college with prosecutor Hugh Dorsey. Years after the case, Alexander refused to attend a college reunion because Dorsey would be there—yet he kept this photo all his life.

Left and below: Alexander also took Frank's case to the public, distributing a pamphlet called *Some Facts about the Murder Notes in the Phagan Case*.

The First Note.



Written on yellow sheet. Found lying close to the head a few minutes after the body of Palmer Smith, 18, was found dead Sunday morning, April 27, 1913, immediately after the discovery of the murder. The address is plain and the crowded condition of the paper indicate that this note was first written.

See its reading on next page.

Reading of note on opposite page with errors uncorrected:

"Mam that negro hire down here did this i went to make water and he push me down that hole a long tall negro black that who it was, long tall negro i wright while play with me."

Reading with errors corrected:

"Mama: That negro hired down here did this. I went to make water and he pushed me down that hole, a long tall negro, black, that who it was, long tall negro. I write while play with me."*

*The purpose of the words "I write while play with me" was probably this: Realizing dimly that the question would arise how the girl mortally injured or dead could have done any writing, or how he, the murderer, standing over her and watching every movement, came to permit her to write notes incriminating himself, this was intended as an explanation. In other words, the reader of the notes was expected to believe that she wrote them without the murderer seeing her do it while he was "playing" with her.

Maud Carter. Their language and sentence structure matched the style of the letters found in the pencil factory, lending credence to the idea that Conley had not written them to anyone's dictation but had composed them himself. Alexander was so convinced that the evidence of the letters proved Leo's innocence and Conley's guilt, that he had his findings privately printed in pamphlet form. He distributed these pamphlets to the general population of Atlanta, hoping to turn popular opinion in Leo's favor.

The defense also had affidavits stating that many of Dorsey's witnesses had been coerced to lie or exaggerate, George Epps among them. The boy's testimony had already been refuted in court by the streetcar conductor. Later George said he had been encouraged to lie and continue lying, even after he admitted to Dorsey that his testimony was false.

A number of the girls who had been character witnesses against Leo stated that they had been told what to say, and one witness even swore he had overheard Conley telling another man that he had killed Mary himself. Annie Maud Carter signed an affidavit saying that Jim Conley had told her that he had beckoned to Mary in the pencil factory after she got her pay and then pushed her down the trapdoor into the basement and killed her. Even Helen Ferguson came forward with the new information that Jim Conley had tried to attack her in the factory the Saturday before Mary had been killed.

And a new witness, Mrs. J. B. Simmons, came forward with an affidavit that stated she had visited Atlanta on April 26. As she walked past the pencil factory at around 2:30, she heard a woman screaming for help from the basement. When she told the solicitor general, he tried to get her to say that she had actually heard the screams after 3:00, or at 1:30 instead of 2:30. "Mr. Dorsey wanted me to testify that it was at the time Mr. Frank was in the factory that I heard the screams, but I told him that I wasn't going to swear to an untruth just to help him or anyone else. I left him my address, expecting to be called as a witness at the trial, but that was the last I ever heard of it."

However, Dorsey argued against the extraordinary motion for a new trial, claiming that witnesses had been paid by the defense's

investigators to give false statements. Some witnesses, like George Epps, did change their testimony back to the original version after being threatened by Dorsey. Others, like Mrs. Simmons, did not, and some of them paid for it. Minola McKnight was attacked at knifepoint, and slashed and beaten so badly that she refused to say anything about the case again.

On May 6, the court refused to grant the extraordinary motion. The defense appealed to the Georgia Supreme Court. In the twenty-first century, this type of appeal process would be drawn out. Prisoners on death row automatically have their cases appealed, and it may take many years before a convicted murderer sentenced to death is actually executed. But in 1914, few verdicts were appealed and executions were carried out a few months after the conviction. When lawyers did appeal a verdict, the courts did not take their time considering the case and giving a decision, as they do today. They ruled quickly and decisively.

Leo barely had time to get his hopes up before the Georgia Supreme Court ruled, on June 6, to deny the defense motion to set aside the conviction on the grounds of failure to allow the defendant due process. When his attorneys took the motion to the Fulton County Superior Court, he hoped for success again, only to have the Superior Court deny the motion as well.

But Leo continued to hope. His attorneys appealed that ruling to the Georgia Supreme Court and also continued arguing the extraordinary motion for a new trial based on new evidence. But on October 14, the Georgia Supreme Court upheld the lower court's denial of the extraordinary motion for a new trial, discounting the new evidence. And on November 17, the same court ruled against setting aside the original guilty verdict.

A new execution date was set for January 22, 1915. But Leo and his supporters refused to give up. Albert Lasker wrote to Leo that he was very glad to see "that the same courageous spirit which has always been with you during your terrible martyrdom is still buoying you up. . . . The courage that your own consciousness of innocence gives you is helping you bridge over the awful chasm of this persecution."

Leo's attorneys took the case all the way to the U.S. Supreme Court, asking the justices to issue a legal document, or writ, of *habeas corpus*. In Latin, *habeas corpus* means "You shall have the body." Under U.S. law, prisoners can petition for such a writ to obtain their freedom when they believe they are being held unlawfully. The defense team argued that Leo was being held in prison illegally since he had been denied due process by not being allowed in court when he was sentenced.

Louis Marshall of the American Jewish Committee traveled to Washington, D.C., to present this argument himself, writing that "I was not in the case as paid counsel, but that I had embarked upon it, because I felt that I owed a duty to the profession, to the cause of justice." The Supreme Court agreed to hear the case.

While the defense presented evidence of the crowd's shouts and threats, Solicitor General Dorsey argued, "We showed by witnesses that none of the alleged demonstrations in the court room during Frank's trial and none of those alleged to have occurred in the streets outside the court house ever came to the attention of the jury."

On April 9, 1915, after Leo had been in jail for nearly two years, the Supreme Court rejected this last appeal, 7–2. The majority decision stated that Leo's attorneys had waived the right to argue that the accused had been denied due process because they had not raised the objection in a timely manner.

Not all the justices agreed. Oliver Wendell Holmes and Charles Evans Hughes dissented, arguing that "Mob law does not become due process of law by securing the assent of a terrorized jury." But their distress didn't help Leo Frank. His execution was now set for June 22, 1915, and his only hopes were to petition the Georgia Prison Commission and then the governor of Georgia, for clemency to mercifully sentence him to life in prison instead of death. Stunned, Leo told reporters, "It is so hideous, but at the same time, so unreal, so incongruous."

On May 31, 1915, the defense appealed to the Georgia Prison Commission for clemency. The defense was denied by a 2–1 vote on June 9. The dissenting commissioner, Thomas Patterson, believed that it would be unforgivable to send a man to death on

the testimony of an accomplice, when that accomplice appeared to be the guilty man. But he was unable to convince the other two commissioners.

Leo could not understand why his appeals had been ruled against on every turn. The evidence that he had not gotten a fair trial seemed overwhelming. As he had asked throughout the appeals process, "Can it be that the law, and our system of its administration, is so inexorable that truth and innocence may never be heard after once the die is cast? Is the door forever closed and the way barred?"



Supreme Court justice Oliver Wendell Holmes. The justice was one of two members of the Supreme Court of the United States who dissented in the court's decision not to overturn Frank's conviction.

“JEW MONEY HAS DEBASED US”

THE COURT OF PUBLIC OPINION

Why did every court rule against Leo Frank? For a start, each court's decision had to be based on points of law, not common sense. An appeals court could only decide whether the law had been followed in the original trial and whether the attorneys had followed the law governing appeals after the original trial was over. None of the judges could retry the case to reach a decision. They could only rule on the information the defense attorneys were allowed to give them in their legal briefs. Well might Leo ask, "Is the technical finesse of the law to forever preclude a hearing of facts, and human right to be trampled beneath the judicial feet?" Indeed, the courts could not apply the common sense that was beginning to be expressed across the entire United States.

Collier's Weekly published a detailed exposé about the case, and newspaper editorials (even in papers published in every southern state) expressed horror that any citizen could be tried by innuendo and prejudice. They begged for some court, any court, to overturn the conviction and give Leo Frank the opportunity for a fair trial. Citizens spoke out in protest, even in Atlanta, where Dr. A. R. Holderby, pastor of the First Christian Church, stated, "If the evidence against this unfortunate man is true—if there is no reasonable doubt—then he ought to suffer the penalty. But it

would be unfair to hang a sheep killing dog upon the evidence upon which Frank has been convicted."

In December 1914, after the Georgia Supreme Court denied the second appeal, the defense asked Judge Roan if he would recommend that the governor grant Leo clemency. Judge Roan wrote, "It is possible that I showed undue deference to the opinion of the jury in this case, when I allowed their verdict to stand. They said by their verdict that they had found the truth. I was still in a state of uncertainty, and so expressed myself. . . .

I allowed the jury's verdict to remain undisturbed. I had no way of knowing it was erroneous." Roan did say that he would urge the governor to consider the case "at the proper time," but would not agree to do so immediately, even though he knew he was in failing health and near death. He concluded with, "If by any cause I am prevented from doing this, you are at liberty to use this letter at the hearing."

In fact, Roan was so unsure about how he had handled the trial that he admitted his doubts to J. J. Barge, an Atlanta attorney. Barge told the judge that if he had felt the same uncertainty that Roan expressed, Barge would "certainly have granted a new trial. [Roan] then said, 'Well, suppose I had, then that dreadful mob spirit would have broken out again, and now when it goes to the Supreme Court and comes back, maybe he can get a fair trial.'"

THE TRUTH ABOUT THE FRANK CASE

BY
C. P. CONNOLLY
Of *Collier's Weekly*

ice 25 Cents

Leo Frank's trial became national news. The national magazine *Collier's Weekly* published *The Truth about the Frank Case*, an exposé about the case.



Powerful figures in southern politics like Tom Watson (above) used the Frank trial to generate support for their own causes.

That mob spirit came from more than prejudice against Leo because he was a northern industrialist. It came from more than sexual prejudice against a man accused of violating a southern woman. It also came from religious prejudice against Leo because he was Jewish. That he was a Yankee Jew only made things worse.

The mob spirit and religious prejudice were fed by one particular politician named Tom Watson. Watson had served in the U.S. House of Representatives, had run as the vice-presidential candidate on the Populist Party ticket with

William Jennings Bryan in 1896, and had run for president himself in 1904. In 1913 he still exerted considerable power over Georgia's Democratic Party and, through his magazines, over Georgia's voters. Watson took the sparks of anti-Semitism and fanned them into a fire that threatened to devastate Atlanta as absolutely as Sherman's fires had in the War Between the States.

Despite that most Atlanta citizens thought well of their Jewish community in general, they were quick to follow Watson's lead. In stirring up public opinion against Leo Frank, reporters and public speakers were willing to use the word "Jew" as if it were an even stronger curse than "murderer." Tom Watson, who claimed he spoke for the Gentile, or non-Jewish, poor and rural people of Georgia, aggressively encouraged this attitude.

Watson asked "Does a Jew expect extraordinary favors and immunities *because of his race?*" and denounced Leo as a wealthy Jew who thought his money gave him the right to prey upon poor southern girls. That was quite a different picture of Leo from the relatively poor man his friends knew. Louis White Fehr had

been a classmate of Leo's at Cornell, a school with many wealthy students, and wrote during the trial that "when I knew Mr. Frank in college he was a young man who lived modestly without a large allowance."

But no one who read Tom Watson's magazine wanted to know what a New Yorker thought about Leo Frank. These readers already resented Leo because they believed that wealthy northern Jews were paying for his legal battle. Watson screamed, "Jew money has debased us, bought us, and sold us—and laughs at us." He sneered at Leo's supporters (mostly Jewish), who were trying to raise money for his appeals, writing,

The [Jewish] Finance Committee and its cooperative organizations do not intend that Frank shall be punished at all, for the rape and murder he committed on the Gentile girl.

In their eyes she was legitimate prey; and with their Unlimited Money and Invisible Power, they have established the precedent in Georgia that no Jew shall suffer capital punishment for a crime committed on a Gentile.

In the name of God, what are the people to do?

Watson stirred up religious prejudice against Jews to the point that some Christian citizens of Atlanta were moved to threaten anyone who supported Leo. While Leo's lawyers worked on his appeal, they were bombarded by anonymous telephone calls threatening, "If they don't hang that Jew, we'll hang you."

This fury against Jews got to the point that people who privately sympathized with Leo feared violent retribution. One Kansas reporter, sent to observe the appeal process, wrote:

The managing editor, associate editor, city editor, assistant city editor and court reporter of an Atlanta newspaper said to me they knew Frank was entitled to a new trial; his trial was not fair.

*“Then why don’t you say so?” I asked.
“We dare not; we would be accused of being bought by
Jew money,” they answered.*

What judge would be willing to reverse Leo’s original conviction on the basis of facts if it meant facing such accusations, especially when he could base his ruling on legal technicalities and spare himself the charge of being bought by Jews?

Only one person in authority proved willing and able to ignore emotion and prejudice, and take a clear-eyed new look at Leo Frank’s conviction.

"RESPONSIBILITY RESTS WHERE THE POWER IS REPOSED"

THE GOVERNOR'S CONSCIENCE

Governor John Slaton had hoped to leave office unscathed by the emotional turmoil of Mary Phagan's murder and Leo Frank's trial. He had his own political ambitions and intended to use the governor's seat as a stepping-stone on the way to the U.S. Senate. Tom Watson and other Georgia statesmen had promised their support for his campaign, and he was eager to get started. His gubernatorial successor, Nat Harris, was due to take office on June 26, 1915, and Slaton assumed that if Leo Frank's petition for clemency came to the governor's office, Harris would be the one who would have to deal with it.

But Leo's petition came to Slaton before he left office, and no sooner had he received it than he began to receive warnings. Watson



John M. Slaton was the governor of Georgia from 1911 to 1912 and 1913 to 1915.

let Slaton know that if the governor would deny clemency and let Leo hang, Watson would use his power to get Slaton elected U.S. senator and would make him the dominant force in Georgia politics for the next twenty years. If Slaton granted clemency, Watson would give his considerable support to someone else.

Threatening Governor Slaton was not a wise move. John Slaton was an unusual politician: a man with a conscience. Watson's "offer," probably beyond any other consideration, prompted him to examine the Leo Frank case closely. He had already gone on record the previous year as believing, "If Leo M. Frank is guilty, he ought to be hanged. If he is not guilty, then he ought to be saved." And the governor seemed unmoved by the prejudice that had swept much of his constituency. He said, "Frank shall not be a victim of injustice because he is a Jew. I don't want the impression to go out that the governor of Georgia could not give justice to a Jew."

On the morning of June 12, 1915, Governor Slaton reluctantly opened hearings on Leo's petition for clemency. Leo's lawyers weren't asking the governor to grant a pardon and say that Leo should not be punished at all for Mary's murder. They were asking him to commute Leo's death sentence to life imprisonment. This was partly due to Leo's insistence that asking for a pardon would be as much as confessing guilt. He didn't want to be pardoned for a crime he had not committed—he wanted justice. His lawyers were also worried about the angry mood in Atlanta. They had good reason to be concerned.

When the prison commission had heard their petition only two weeks earlier, nearly one thousand people had gathered in Marietta, Mary's hometown, in a meeting to protest granting clemency. The meeting started with the cry, "Let him hang!" and built to its climax with the angry announcement: "Mary Phagan was a poor factory girl. What show would she have against Jew money? When they found they couldn't fool the people of Georgia, they got people from Massachusetts, New York and California to try and raise trouble. Well, we throw the advice of these outsiders back in their teeth."

The group sent a delegation to inform the commission of the depth of their feelings. Leo's lawyers suspected that Atlanta would

explode in riots and Leo might be attacked before he could be taken out of the city if they asked for a pardon and received it. So they petitioned the governor for commutation of Leo's death sentence to life in prison.

Governor Slaton conducted intensive hearings. He visited the factory and explored the office area, the metal shop, and the basement. He read through the transcripts, legal briefs, and all documents relating to the case. And he considered the affidavits of Will Green, William Mincey, and others who had sworn they heard Jim Conley confess to the murder.

The governor also considered the letter Judge Roan had written before his death, saying that he would urge the governor to consider clemency. He considered a letter sent him by Colonel P. H. Brewster, who had been one of Hugh Dorsey's law partners at the time of Leo's original trial. Brewster said that based on the facts he learned at the law office, he was certain that Leo Frank was innocent. He even urged the governor to publish his letter so that the public would know the truth.

Slaton spoke with people outside of the hearings. Deputy Clerk of the Court Frank Myers told the governor that Judge Roan had told him in the men's room that the solicitor general who had preceded Hugh Dorsey would have asked the jury to find Leo not guilty. One of the jailers, Mr. Tuggle, told the governor that "if he had been left for a few days longer in charge of the prisoners, he was convinced from the way Jim Conley talked, that Conley would have admitted committing the offense, but the Chief of Detectives said that he didn't care anything about convicting a negro for the murder. That, of course, was the usual course of events, but it would be a feather in his cap if he could convict a white man and a Jew."

John Boykin, who would later be elected solicitor general, wrote to Slaton that he had spoken with William Smith, Jim Conley's lawyer, and Smith had told him that Conley had admitted to committing the murder. Smith felt, however, that he could not disclose this admission publicly because of attorney-client privilege, which protects the privacy of conversations between lawyers and

those they represent. But he had issued a statement that "Leo M. Frank is innocent, and that if a proper cooperation of officials can be secured I have absolute faith that the mystery of the death of Mary Phagan will be solved to the satisfaction of every reasonable man in the community."

The governor himself spoke at length with Smith. The lawyer would not confirm that Conley had confessed to him, but he pointed out that police had never matched the bloody handprints in the basement to Leo Frank. In 1913 people who were arrested were not automatically fingerprinted, so Jim Conley had never been printed. Smith had attempted several times to take the man's fingerprints to compare them with the prints on the basement door, but Conley always resisted.

Smith had not been in court while Conley testified, at Dorsey's request. When he later read Conley's trial testimony, Smith was stunned. Having spoken to his client a good deal, Smith saw that the man who read newspapers avidly (especially the ones with articles about him) and who discussed the news and the trial with his attorney had disguised his true intelligence on the stand to win over the jury. He presented himself as the simple black man that the white jury would most expect to see and would most easily believe. In jail Conley often spoke articulately, yet on the stand, he had used simple words and a more familiar black dialect.

In addition to listening to Smith, considering correspondence with other attorneys, interviewing people involved in the proceedings, and examining the case in detail, Governor Slaton also read his mail. He received over one hundred thousand letters from citizens and statesmen all over the United States requesting clemency. Even children like Marjorie Smith, of Loudonville, Ohio, had written:

I heard of Leo Frank in the press.

He does not look guilty there.

*I am only ten years old, but I know something about
the ways of men, how they treat their wives when they are
drunk.*

I am not old as you know, but for my sake release Leo Frank.

*Yours, truly,
Marjorie Smith*

P.S. Write soon.

The world outside of Georgia seemed solidly in support of Leo Frank. But Slaton also received numerous letters from Georgians demanding that he let the sentence of the court stand. The governor considered both evidence and public opinion before making up his mind.

Saturday afternoon, June 19, 1915, Slaton sat down to write a twenty-nine-page document explaining his findings. He carefully laid out the facts of the case, both those that seemed to incriminate Leo and those that appeared to exonerate him. And he described his own careful research at the pencil factory. The governor ended by saying that there was considerable new evidence that had never been introduced at trial, such as Dr. Harris's admission that the hairs on the lathe were not Mary's. Legally, there were strong grounds for commuting Leo's death sentence.

Governor Slaton finished his document on Sunday but delayed announcing his decision. Around 11:30 that night, he sent the sheriff orders to transfer Leo to the Georgia State Prison Farm at Milledgeville on the 12:01 train to Macon. The sheriff awakened Leo and rushed him to the train station. At Macon they hired a local taxi cab company to drive them to the prison farm. A group of about ten men surrounded the car, and one told Leo, referring to another Georgia town along the railroad route, "You're lucky to save your neck. You are lucky you came through Griffin without anyone knowing that you were on the train." Throughout the drive, Leo seemed to have difficulty believing that he was actually being reprieved from execution. He was convinced that cars were following him and he'd never reach the prison farm safely.

The news broke on Monday morning: Governor Slaton had commuted Leo's sentence. He explained his decision by writing, "The performance of my duty under the Constitution is a matter of

conscience. The responsibility rests where the power is reposed. . . . I can endure misconstruction, abuse and condemnation, but I cannot stand the constant companionship of an accusing conscience, which would remind me in every thought that I, as governor of Georgia, failed to do what I thought to be right."

Georgia erupted in fury. Although newspaper editors and politicians outside of the state would praise his courageous decision, Hugh Dorsey denounced Governor Slaton and Tom Watson railed against him in print, "Our grand old Empire State HAS BEEN RAPED!" A mob of four thousand angry people armed with guns and bricks and shouting, "Pay the Governor a call!" marched toward the governor's mansion, where Slaton waited with his wife and a dozen friends who were armed with rifles or pistols, prepared to defend the governor. Chief Beavers met the mob with fifty mounted officers but stopped only about half of the people. The state militia was called out. When the mob arrived at the mansion, they attacked the militia with rocks and broken bottles, but the soldiers were able to force them back.

Then word arrived that two hundred people from Marietta were on their way. This mob had already hanged Slaton in effigy over a sign, "John M. Slaton, King of the Jews and Traitor Governor of Georgia." Then they burned the mannequin and headed for Atlanta. When the mob saw the militia, however, they stopped short.

In Newnan another mob hanged effigies of both Slaton and Frank, set them on fire, and dragged them through the streets. And in Columbus, a mob hanged Slaton in effigy and then used the figure for target practice. Rumors flew that a group of 150 people in Marietta had met at Mary Phagan's grave. They called themselves the Knights of Mary Phagan, and swore to punish both Governor Slaton and Leo Frank, no matter how long they had to wait.

The Marietta Vigilance Committee passed out flyers to Jewish storeowners warning them, "You are hereby notified to close up this business and quit Marietta by Saturday night, June 26, 1915 or else stand the consequences. We mean to rid Marietta of all Jews by the above date. You can heed this warning or stand the punishment the committee may see fit to deal out to you."



Governor Slaton was widely attacked for his decision in the Frank case. The sign beneath his hanging effigy reads, "John M. Slaton the King of Jews."

Atlanta Jewish merchants organized groups to keep watch over their shops, attempting to protect them from angry rioters. At the same time, they kept their children indoors, afraid they might be attacked. Jewish families in Marietta also stayed out of sight, hoping the violence would blow over. In Atlanta the mob stormed the governor's mansion a second time and martial law was briefly declared.

On June 26, during the inauguration ceremonies for Slaton's successor, Nat Harris, a man attacked Slaton with a thick iron pipe. Major Polhill Wheeler of the National Guard pulled the man away. Shaken, Slaton still managed to speak out at the luncheon honoring the new governor. He told the people of Atlanta,

Honest people may disagree with me, an honest man, but we realize that we must be measured by our consciences.

Two thousand years ago another Governor [Pontius Pilate] washed his hands of a case and turned a Jew [Jesus] over to a mob. For two thousand years that Governor's name has been accursed. If today another Jew were lying in his grave because I had failed to do my duty I would all through life find his blood on my hands and would consider myself an assassin through cowardice.

Once the new governor was in office, John Slaton and his wife left Georgia. Several weeks afterward, Mayor James Woodward of Atlanta said, "I have been friends with [Jack Slaton], and while I hate to say it, I would not advise him to return to Georgia for a year—if ever." Saddened by the way his constituents had turned on him, Slaton did not return to Georgia for many years, and when he finally returned, he never again served in public office.

Hugh Dorsey, vigorously supported by Tom Watson (who was himself elected U.S. senator), would be elected governor of Georgia in 1917 by a landslide.

“I AM ALIVE BY A BIG MAJORITY”

ATTACK

Leo arrived at the Georgia State Prison Farm at Milledgeville feeling ill, and wrote Lucille immediately to assure her he was getting better:

My dear Honey:

I received several letters today & several wires. I expect that you are a trifle “under the weather” over the storm through which we have passed. It has indeed been an ordeal for both of us my darling but in time both of us will be happy. My health is improving though my cold is still with me. My appetite too is improving. After that which I have gone through, it will take some time before I gain my poise & physical balance. I will let you & my parents know just when it will be best for you to come to see me for the first time. . . .

*With much love to all & a large share for you, I am
Your loving husband
Leo*

Once his health improved, Leo was issued the striped prison uniform that identified him as the lowest grade prisoner and became known simply as Convict No. 965. He quickly settled into a routine that was almost a relief after his long months in the tower. Working and exercising regularly was a definite improvement after his confinement. Friends and family sent him food and supplies, from stationery and stamps to a gramophone and audio recordings, and his parents wrote him often. Nearly every envelope contained a letter about the case from his father, an affectionate letter from his mother about friends and family, and a much scrawled and blotted note from his niece, Eleanore, usually along the lines of:

*Dear uncle Leo and aunt Lucille,
I send you many kisses from me & brother Robert.
Your niece,
Eleanore*

After he finished his prison chores, Leo would write letters. He wrote to friends and to acquaintances who supported his appeals, assuring them that the commutation would give him the opportunity to pursue his quest for justice. Leo was particularly touched by the youngsters who wrote to him. Soon after his arrival in Milledgeville, he received a telegram from Jesse Berkovitz of Tuscaloosa, Alabama:

I congratulate you and the governor of Georgia. I hope the truth will be found out and you will some day be free. I am 11 years old and have read the papers and can't believe you guilty.

Leo wrote back to Jesse on July 6:

*My dear little friend,
Allow me to thank you for your telegram of June 21. I was profoundly touched by your tender thought of me. It surely can not be long before I am free and vindicated, and right and innocence come into their own.*

*With the assurance of my every good wish, I am,
cordially yours,
Leo M. Frank*

Leo believed what he wrote to Jesse. He confidently expected to win a new trial and be exonerated in the future. He anticipated returning to work and wrote often to Herbert Schiff, who was now acting as superintendent at the pencil factory, asking about production and questioning activities such as taking inventory.

Leo treasured Lucille's frequent visits, even though they could see each other only in the presence of a guard. When she wasn't visiting, he wrote her daily.

My own:

I trust that you arrived home safely after a pleasant trip. I did so much enjoy having you with me. Your presence was a tonic and an inspiration. I look forward to your next visit here to me.

But in less than a month, Leo's routine in the prison farm would be interrupted, not by the news that he had won a new trial but by an unexpected attack on the night of July 17, 1915. While Leo slept, another prisoner, J. William Creen, slashed Leo's throat with a butcher's knife—something no prisoner should have been able to obtain.

Leo nearly bled to death before two other prisoners who happened to be doctors were able to stitch the severed jugular vein and close the wound. Dr. G. D. Compton, the prison doctor, arrived about fifteen minutes later, but that would have been too late without the quick action of the other men.

When he recovered enough to speak, Leo told the doctor, "If I am going to die, I am not afraid. Nothing stands between me and God. I hope that the man who attacked me will be forgiven." As if to



Leo Frank recovered from his first attack in this prison hospital ward in the summer of 1915.



himself, he whispered, "I guess they have got me now."

Lucille was called around 1 A.M. and rushed to her husband's side. She wrote, "He's so weak, but so brave. He looks at me and smiles such a dear smile. When I came into the room he could barely make himself understood but he whispered 'Angel.'" She sat by his side all night, holding his hand and fanning him.

Tom Watson lost no time in celebrating the attack and viciously taunted Leo in his magazine by claiming, "The butcher-knife used had been in operation during the day *killing hogs*." This idea that a knife used for hog killing might be used to cut a Jew's throat was a cruel mockery of the Jewish dietary prohibition against eating pork.

Crean, however, told authorities that he had slipped the knife from the kitchen and hidden it in his cot. At first he said he had been called from "one on high" to kill Leo but later said, "I felt that as long as he was here there was danger of the prison being attacked. I was afraid the guards and the people making the attack would shoot at each other and people would be killed, so I came to the conclusion that it was my duty to save the people from the danger to which Frank's presence exposed them."

Several days later, Leo asked Dr. Compton if he thought he would live. When the doctor assured him that he would, Leo said, "I am going to live. I must live. I must vindicate myself."

His courage and determination inspired the friends who had supported him all along. Herbert Haas wrote to Lucille that Leo's "every action is but a credit to his friends, and that I am proud to know a man with the character and stamina of Leo."

At first Lucille hired nurses to be with him around the clock. As he improved, she took over the nursing job. Leo's humor returned along with the confidence that he would soon have the opportunity to continue seeking justice. He wrote to his mother:

Just a few words to let you know that I am improving daily & that my dear Lucille is well & on the job. We let the night nurse go & the day nurse will take her place, dear Lucille holding the fort in the daytime.

I hope you did not yesterday or today hear the rumor I heard—viz [namely]: that I was dead. I want to firmly and decisively deny that rumor. I am alive by a big majority.

“CALMNESS AND DIGNITY”

DEATH SENTENCE

Shortly after John Slaton left Georgia, several men in authority got together in Marietta to discuss what they should do about the commutation of Leo Frank's sentence. These were not rough, uneducated countrymen but men who represented Georgia's finest families and greatest statesmen: a former governor, a former mayor, and several active political figures.

These powerful men made their plans and then looked for other men to carry them out. They selected a merchant, a lawyer, and the man who ran the county convict camp to be in charge. The group began looking for others to assist them. This was fairly straightforward. A man would simply approach a person he'd like to draft (many of them Knights of Mary Phagan) and ask him if he wanted to participate. If he declined, there were no hard feelings. If he accepted, he was one of them.

The group wanted to keep things orderly, so they were looking for certain types of men. They especially wanted anyone with law enforcement experience and individuals with particular skills. For example, one man owned a garage that could get cars in shape, while another was an electrician. Eventually, the group came to include sheriffs, deputies, police officers, two bankers, Mary Phagan's uncle, and the mayor of Marietta.

One of the planners described the participants as men “whose worth was known collectively and individually, who were resolved to bear any burden and go through with their plans at any cost.” Their scheme was to contact officials at the Georgia State Prison Farm at

THE LYNCH PARTY

Milledgeville in advance so they would be able to enter and leave without doing any damage, remove the prisoner with dignity but with firmness, and take Leo Frank to Marietta in Cobb County where they would finally carry out the sentence of the jury.

On August 16, 1915, seven automobiles left Marietta carrying this group of men. They left at different times, so nobody would notice them, and then met up with one another. The cars reached the prison farm around 9 P.M. where "Yellow Jacket" Brown, the electrician, was waiting for them. He promptly cut nearly all the town's phone lines.

At the prison, an inmate heard the cars on the prison farm road. Aware that threats had been made against their famous prisoner, he asked the guards to send Leo to safety. But one of the prison officials who had been contacted in advance told the man it was probably just joyriders.

Not all of the men involved in the planning and lynching of Leo Frank have yet been identified, but those whose names are known are:

GOVERNMENT OFFICIALS AND EMPLOYEES

JOSEPH M. BROWN, former governor of Georgia

EMMET BURTON, police officer

EUGENE HERBERT CLAY, former mayor of Marietta

E. P. DOBBS, current mayor of Marietta

WILLIAM J. FREY, former Cobb County sheriff

GEORGE HICKS, Cobb County deputy sheriff

WILLIAM MCKINNEY, Cobb County deputy sheriff

NEWTON AUGUSTUS MORRIS, superior court judge

NEWTON MAYES MORRIS, in charge of the Cobb County chain gang

FRED MORRIS, Georgia general assemblyman

GEORGE SWANSON, Cobb County sheriff

OTHER PARTICIPANTS

JOHN AUGUSTUS BENSON, merchant

D. R. BENTON, Mary Phagan's uncle

"YELLOW JACKET" BROWN, electrician

BOLAN GLOVER BRUMBY, manufacturer

JIM BRUMBY, garage owner, serviced the cars

LUTHER BURTON, coal yard operator

GEORGE EXIE DANIELL, merchant

CICERO HOLTON DOBBS, taxi driver

JOHN TUCKER DORSEY, lawyer

C. D. ELDER, physician

GORDON BAXTER GANN, lawyer

ROBERT A. HILL, banker, helped fund the operation

HORACE HAMBY, farmer

LAWRENCE HANEY, farmer

RALPH MOLDEN MANNING, contractor

L. B. ROBESON, railroad freight agent, provided a car

MOULTRIE MCKINNEY SESSIONS, lawyer and banker

"COON" SHAW, mule trader

The men from Marietta had a map of the farm and wasted no time in seizing and disarming the warden and the superintendent, finding Leo, and hauling him out of bed. Leo asked permission to dress, but someone in the group told him he wouldn't need clothes where he was going. They handcuffed him and dragged him in only his nightshirt to one of the waiting cars. Then one of the men told the prison staff that they were taking Leo to Marietta, where they would hang him over Mary Phagan's grave, and the caravan drove away.

When the warden tried to call for assistance, he discovered the phone lines had been cut. It took several hours to find an undamaged phone line and place a call to Atlanta. By the time the police had been notified, it was too late to stop the lynch party.

While they drove to Marietta, several of the men in the car that carried Leo tried to get him to confess. One asked him if he had killed the Phagan girl, but he said nothing. Another man asked, "Is there anything you would like to say before your execution?"

Leo said, "No," his voice so low they could barely hear it over the engine.

As they drove through Alpharetta, about twenty miles northeast of Marietta, they were joined by Judge Newt Morris. By daybreak they had reached Frey's Gin, two miles east of Marietta. Although they had claimed they were going to hang Leo over Mary's grave, they had probably planned to hang him in this spot from the beginning. It was owned by Sheriff Frey, one of the group's organizers, so they wouldn't be disturbed. Sheriff Frey had, in fact, tied the noose himself. And the location faced the house where Mary Phagan had been born and lived until her mother moved the family to Atlanta.

The lynchers led Leo to an oak tree. One of them later said that "he behaved throughout with a calmness and dignity and an utter lack of panic." While one of the men brought up a table and looped the hanging rope over a branch of the tree, Leo asked permission to write to Lucille. Someone gave him pencil and paper, and he wrote a brief note in a language the men didn't recognize. Some thought it was Yiddish, but it may have been German. No one knows the contents of that note to this day.

According to the lynchers, Leo said, “I think more of my wife and my mother than I do of my own life.” His lynchers believed he meant that he thought so highly of the women in his life that he would not shame them by confessing to murder. But perhaps he meant that he honored them because they had consistently believed in his innocence and had not abandoned him, and their love and loyalty was worth more than whatever happened to him. Or he might simply have meant that he loved his wife and mother and was able to face his death knowing he had been a good husband and son.

The lynchers tied Leo’s feet, lifted him onto the table, and wrapped a piece of cloth around his lower body, since he was only wearing the nightshirt. Leo’s last request was that they return his wedding ring to Lucille.

At 7:05 A.M., Judge Newt Morris repeated the sentence of the court that Leo should be hanged by the neck until dead. Then the judge kicked the table out from under him.

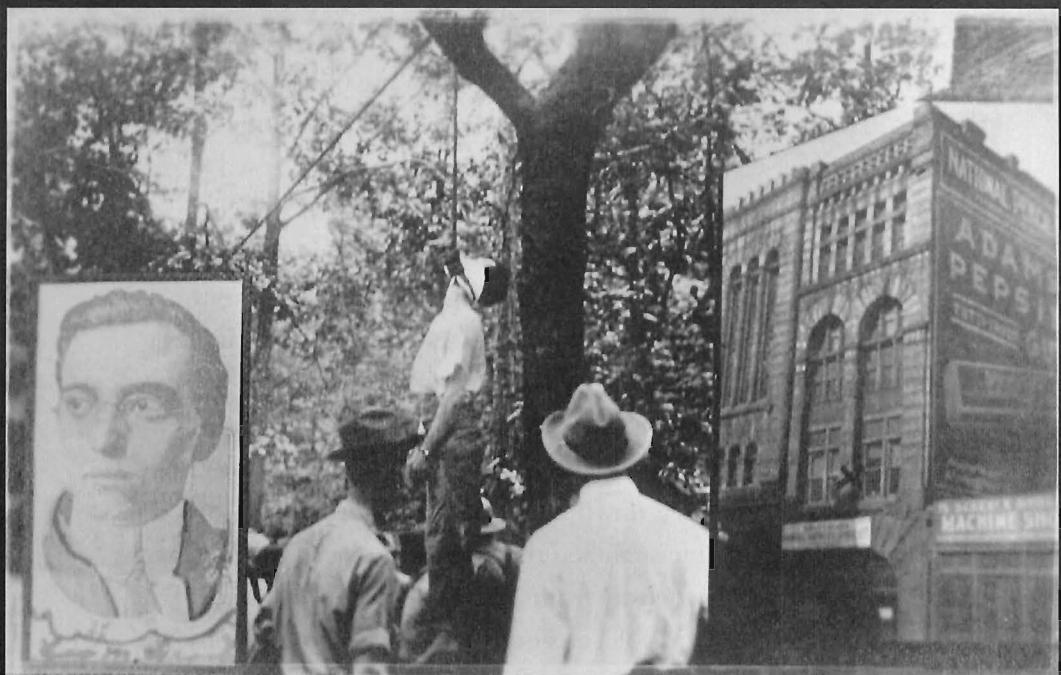
Leo did not die immediately, because the fall from the table was not great enough to snap his neck. Instead, he suffocated over some minutes, struggling so desperately that the slash in his neck opened and he bled onto his shirt. Confident that their job was done, the lynchers drove away from the scene, leaving Sheriff Frey to find the body later. Deputy Sheriff Hicks (one of the lynchers) received a phone call with the official notification.

More than a thousand people swarmed to the scene within hours, eager for a sight of Leo’s body—many eager for photographs and souvenirs as well. The atmosphere was somewhere between celebration, vindication, and religious rapture. The crowd swelled to three thousand, and its rowdier members wanted to rip the body down and desecrate it.

Aware of this possibility, Judge Morris returned to the scene to prevent any violence. He was afraid that such impassioned attacks on the body might undo the dignity of his group’s lynching, which he viewed as the most appropriate way to carry out the jury’s verdict, given the circumstances. Robert Howell, a rowdy hothead who wished he had been included in the lynching party, shouted at Leo’s body, “You won’t murder any more little innocent girls! We’ve got you now!!”



Leo Frank was lynched on the morning of August 16, 1915.



Frank's death brought with it a business in souvenirs to commemorate the lynching, including postcards (*above and at left*). The card on the left reads "Leo M. Frank lynched for criminal assault on little Mary Phagan, near Marietta, Georgia, 1915."

Judge Morris tried to calm him down while the undertaker's men drove up, but someone sliced through the rope and Leo's body fell to the ground. As if waiting for that signal, Howell and the crowd pressed in upon him. Roger Winter wrote in the *Journal*, "Again and again, as a man grinds the head of a snake under his heel, did the man drive his heel into the face of Leo M. Frank, grinding the black hair into the dirt and dead black leaves until the crowd, stricken silent and motionless, could hear the man's heel as it made a crunching sound."

Finally, Judge Morris was able to stop Howell and remove the body. But the undertaker's wagon barely made it to Marietta's city limits before it was chased down by several cars. Fortunately, one of them was the judge's. He snatched the body and placed it in his back seat while his driver sped away from Marietta toward Atlanta. By the next day, picture postcards of Leo's body hanging from the noose, as well as cut pieces from his shirt and from the rope, were selling so fast that the police announced, "Any person selling articles represented as souvenirs of the lynching of Leo Frank must have a city license."

People across the nation were outraged. John Slaton said, "Every man who engaged in the lynching should be hanged, for he is an assassin."

Heartbroken, Lucille brought Leo's body to Brooklyn where an undertaker would try to rebuild Leo's ruined face. Reporters attempted to question the family, but Leo's mother said simply, "My son belongs to me. I want a quiet funeral." The private funeral was held at Mount Carmel Cemetery on Friday morning, August 20, 1915. Leo's mother cried out several times for her boy during the ceremony, and Lucille wept for her "angel" and nearly stumbled at the cemetery.

Back in Marietta, the Knights of Mary Phagan were congratulated in print by Tom Watson, although officials vowed to find the lynchers. Governor Harris pledged to do everything in his power "to see to it that the members of this mob receive fitting punishment for their crime." But no one turned in a single man. According to the *New York Times*, "The word mob does not seem descriptive, for these men did not display the ordinary characteristics of a mob. Lynching mobs are usually composed of riff-raff, but this one consisted of leading citizens of the community, men prominent in business and social circles."





Pallbearers carry Leo Frank's coffin in New York.

A Cobb County grand jury claimed they could not indict anyone for the lynching because they were unable to identify anyone connected with it. Seven members of the lynching party sat on the grand jury panel.

Not one of the lynchers would ever be arrested or punished, and none would even be publicly identified until decades later.

In the wake of Leo's lynching, his supporters were more vocal than ever. It was too late to help Leo, but it was high time to ensure

that such injustice never happened to another Jew. The American Jewish Committee worked with other supporters to form the Jewish Anti-Defamation League of B'nai B'rith, which exists to this day. The group's mandate is to fight anti-Semitism and all forms of bigotry, defend democratic ideals, and protect civil rights in the United States and abroad.

Unfortunately, Leo's detractors became more vocal than ever as well. Invigorated by Watson's praise and his rhetoric condemning Jews, Catholics, and African Americans, the Knights of Mary Phagan reestablished the Ku Klux Klan. Originally formed during Reconstruction to intimidate Yankees and freed blacks, the Klan had become increasingly violent until many southerners joined federal authorities in calling for it to be shut down. This 1915 revitalization of the organization lasted considerably longer than the original Klan and was more violent. It became so powerful in the South that it almost took control of the Democratic Party in 1924. Watson proudly supported the Klan, claiming that in Georgia he was "the King of the Ku Klux."

Ironically, it was the family of some of these Klansmen who finally revealed the identity of the men who had lynched Leo Frank. For years, their names remained a well-known secret—well known in that everyone in Marietta knew who they were but secret in that no one in the legal system could identify them. But in the 1990s, Mary Phagan's great-grandniece made a list of the lynchers. She based it on information spontaneously volunteered by people who told her, when they found out who she was, that their father or grandfather or uncle had been among the group. Mary Phagan Kean's list appeared on the Internet on January 1, 2000—without her knowledge or consent.

Long before that happened, however, Lucille herself had died. She had returned to Atlanta to be with her parents after her husband's funeral. There, as the lynchers had promised, she was given Leo's wedding ring. One of them delivered it to a newspaperman, who brought it to her.

Lucille lived the rest of her life in Atlanta, maintaining that Leo was innocent. Until her death in 1957, she signed her name proudly as Mrs. Leo M. Frank.

"LIES HEAPED ON LIES"

THE LAST EYEWITNESS

On March 6, 1982, nearly seventy years after Mary Phagan's murder, the last eyewitness signed an affidavit and prepared to return with it to Atlanta. Alonzo Mann, the office boy who had cried back in 1913 when he brought Leo the newspaper announcing his forthcoming arrest, stated:

In 1913 I was the office boy for Leo M. Frank, who ran the National Pencil Company. That was the year Leo Frank was convicted of the murder of Mary Phagan. I was fourteen years old at the time. I was called on as a witness in the murder trial. At that time I was put on the witness stand, but I did not tell all that I knew. I was not asked questions about what I knew. I did not volunteer. If I had revealed all I knew it would have cleared Leo Frank and would have saved his life.



Alonzo Mann at the time of his affidavit in 1982.

Alonzo went on to describe his work at the pencil factory and then said that when his mother hadn't shown up to meet him before the parade on Confederate Memorial Day, he'd decided to go back to work. In a tone reminiscent of the shock and fear he must have felt when he was fourteen, the eighty-three-year-old man continued:

Inside the door, I walked toward the stairwell. I looked to my right and I was confronted by a scene I will remember vividly until the day I die.

Jim Conley was standing between the trapdoor that led to the basement and the elevator shaft. I have an impression that the trapdoor was partially open, but my eyes were fixed on Jim Conley.

He had the body of Mary Phagan in his arms. I didn't know it was Mary Phagan. I only knew it was a girl.

At that moment I couldn't tell if she was alive. She appeared to be unconscious. . . .

Jim Conley turned around toward me. He either heard my footsteps coming or he sensed I was behind him. He wheeled on me and in a voice that was low but threatening and frightening to me, he said:

"If you ever mention this I'll kill you."

I turned and took a step or two—possibly three or four steps—up toward the second floor, but I . . . was fearful that the office might be closed, so I turned back toward Conley. I wanted to get out of there quick. He got to within eight feet of me. He reached out as if to put one arm or hand on me. I ran out of the front door and raced away from that building.

I related to my mother what I had seen there at the pencil factory. She insisted that I not get involved. She told me to remain silent. My mother loved me. She knew Conley had threatened to kill me. She didn't want our family's name to be involved in controversy or for me to be subjected to any publicity. My father supported her in

telling me to remain silent. My mother repeated to me over and over not to tell. She never thought Leo Frank would be convicted. Of course, she was wrong. . . .

Leo Frank was convicted by lies heaped on lies. It wasn't just Conley who lied. . . .

At last I am able to get this off my heart.

I believe it will help people to understand that courts and juries make mistakes. They made a mistake in the Leo Frank case.

Jim Conley had already admitted to carrying Mary's body to the basement, but he had said he'd done so on Leo Frank's orders and with Leo's help. He'd also claimed that they had taken the body from the second floor to the basement in the elevator. Alonzo's testimony placed Jim Conley on the first floor without Leo, carrying Mary's body by himself. Alonzo also swore he had seen Conley taking Mary's body toward the trapdoor and the steps that led down to the basement, not riding down in the elevator with the body. These were two huge discrepancies in Jim Conley's stories that could have exonerated Leo and convicted the sweeper.

Alonzo's uncertainty about whether Mary was already dead or still alive matched the point raised during Leo's many appeals, that there were "cinders and saw-dust in Mary Phagan's nose and mouth, drawn in in the act of breathing." If Jim Conley had knocked Mary unconscious when she came down the stairs and refused to give him any of her pay, then thrown her down to the basement and murdered and robbed her there, then she would indeed have had sawdust and cinders in her airway. If Leo had murdered her outside his office as the State of Georgia had argued, then her airway would have been clean. Alonzo Mann submitted to two separate polygraph tests to confirm that he was telling the truth. He passed them both.

On the basis of this new testimony, the American Jewish Committee, the Atlanta Jewish Federation, and the Anti-Defamation League applied for a pardon from the Georgia State Board of Pardons and Paroles. While there was considerable sympathy from many

southerners for this request, some Georgians argued passionately against it. Former Georgia Court of Appeals judge Randall Evans insisted the evidence against Leo Frank had been overwhelming. He attacked Governor Slaton's commutation as a "rape of the judicial process" and said the request for a posthumous pardon was "completely ridiculous."

Although the board considered this application, the members were limited in how much research they could actually do into the original case. Hugh Dorsey had diligently saved all of his notes and even the forensic evidence from his most famous case, but his records disappeared shortly after his death in 1948. On December 22, 1983, despite Alonzo's appearance in person before the state board, the application was rejected on the grounds that it did not prove Leo's innocence.

Alonzo died in March of 1985, but the Anti-Defamation League filed a new application for pardon. Members of the board were troubled that the case had never fully been resolved because Leo had been lynched before he was able to make further efforts to prove his innocence. They also admitted that the State of Georgia had failed to protect the prisoner in its care. On March 11, 1986, the board issued a final statement, concluding:

Without attempting to address the question of guilt or innocence, and in recognition of the state's failure to protect the person of Leo M. Frank and thereby preserve his opportunity for continued legal appeal of his conviction, and in recognition of the state's failure to bring his killers to justice, the State Board of Pardons and Paroles, in compliance with its constitutional and statutory authority, hereby grants to Leo M. Frank a pardon.

Neither the board nor any court was ever able to consider the possibility that Jim Conley was the sole murderer, as Alonzo Mann, William Smith, Will Green, Governor Slaton, and even Judge Roan ultimately believed. After Conley served his one-year sentence for

accessory, he spent the rest of his life in and out of prison, finally disappearing in the 1960s and presumed dead. In 1959 attorney A. L. Henson published his memoirs and claimed that while Jim Conley had been his client, the man had confessed to him that he had struggled with a girl in the pencil factory but had then blanked out. When Conley came to himself, he was in the basement and the girl was dead. Henson had not spoken out earlier because of lawyer-client privilege.

Some passionate analysts of the case continue to vehemently argue Conley's guilt versus Leo's guilt. Mary Phagan's great-grandniece, Mary Phagan Kean, still insists that Leo "is not a martyr, he is a murderer." But most people on both sides agree that Leo never got a fair trial. Even with the perspective of many decades of elapsed time, however, many people remain unsure of what really happened. A number of them have written their own versions of the story in their struggle to explore this troubling case and find its truths.

Ward Greene was the first of several writers to tackle the case in his 1936 novel, *Death in the Deep South*. In the late 1930s, *They Won't Forget* opened in movie theaters, and in 1988, a television miniseries aired written by Larry McMurtry, called *The Murder of Mary Phagan*. This film still turns up occasionally on cable channels. In 2000 playwright Alfred Uhry and composer-lyricist Jason Robert Brown wrote a musical for Broadway about the case, called *Parade*. And in 2009, Ben Loeterman's documentary titled *The People v. Leo Frank* aired on PBS with a world premiere in Cobb County, where Leo was lynched. All of these writers agree that Leo Frank did not get a fair trial. They have all tried to make sense out of what happened to Mary and Leo, yet questions persist.

Did the jury convict Leo Frank on the basis of the evidence? Or was public opinion prejudiced against Leo because he was a Jewish, college-educated, well-paid Yankee who had come into this southern city on the wave of northern industrialization? Would his fate have been the same if he had been an Atlanta Jew instead of a Yankee Jew? Did he pay with his Yankee blood for the devastation of Atlanta at the hands of William T. Sherman during the "Recent Unpleasantness"? Or was Leo Frank convicted by the anti-Semitic sentiment that ran so

strong during his trial? How far will good citizens go down the path toward violence because they hate people who belong to a particular religion or ethnic group?

Perhaps the most troubling question is why so many people involved in the case lied, particularly so many factory employees. They admitted they lied, and some said they were persuaded or even coerced by Hugh Dorsey, but what about the others? Was it merely because they liked the idea of so many people paying attention to them and respecting them? Did they give in to peer pressure? Were they caught up in some sort of emotional mass hysteria? Did they even convince themselves that they were telling the truth or perhaps that their lies were unimportant because surely Leo Frank was guilty or he wouldn't be in court? Whatever the reason, some of them were never able to let go of their belief that Mary Phagan's killer had, indeed, been hanged in Marietta.

That mass hysteria or prejudice or delusion continued to grip Atlanta even after World War I. In 1922 journalist Pierre Van Paassen tried to publish the fact that the photos of the bite marks on Mary's shoulder did not match the photos taken of Leo's teeth and that Dorsey had known but suppressed the information to get a conviction. Van Paassen received a note warning him to "lay off the Frank case if you want to keep healthy."

Van Paassen realized how deeply sentiments still ran one morning when a "large automobile drove up alongside of me and forced me into the track of a fast-moving streetcar coming from the opposite direction. My car was demolished, but I escaped." Seven years had passed since Leo's lynching, and World War I had changed the face of the world more than Mary Phagan's friends at the factory could have imagined, yet many citizens of Atlanta still refused to consider that the evidence that convicted Leo Frank was a tissue of lies and innuendo.

Significant changes have been made in the U.S. legal system since Leo was convicted. For example, if prosecutors discover exculpatory evidence that suggests the accused is innocent, such as the forensic evidence of the hair found near Leo's office or the identification of the bite marks, they are required to share that evidence with the defense

under the rules of discovery. But not all prosecutors follow the rules, even today. Sometimes they believe so strongly that someone is guilty that they suppress evidence that might get in the way of convincing a jury to convict the suspect. Or sometimes they abuse the system to advance their personal careers. How can a suspect offer a defense if the system that protects his or her rights has been corrupted?

Atlanta's Mayor Woodward called Leo's lynching for Mary Phagan's murder "a just penalty for an unspeakable crime." But was Mary's murder the only unspeakable crime? Wasn't Leo's lynching an unspeakable crime also? What about the lies of so many teenage witnesses? Or Alonzo Mann's silence? Or the way the entire case perverted the U.S. concept of justice?

It's hard to be certain whether it would have made a difference if Alonzo had ignored his mother and spoken out at Leo Frank's trial. Perhaps Dorsey would merely have woven the eyewitness account into his argument, claiming that the boy had seen only the large African American man carrying the body and not noticed the smaller white man behind him. The fact that he had not told the truth haunted Alonzo all his life, although he said he tried to tell people a few times and was always told not to raise the specter of the old case again.

"I was only 14 years old," Alonzo told reporters in 1982. "Nowadays you're practically a man at that age. But things were different then. . . . I was just a boy. I was scared. I knew that if Jim Conley got his hands on me, he would have killed me." If fourteen was young enough to be fearful of the consequences of his actions and to feel he must obey his mother, even though that meant lying on the witness stand, Alonzo was sixteen by the time Governor Slaton investigated the verdict. How old do you have to be to make up your mind whether or not to speak out, despite what your parents tell you and regardless of the consequences?

To weigh the issues in the case of Mary Phagan's murder and Leo Frank's lynching is to look deep into the darker side of the U.S.: the painful injustice of the nation's "justice" system; the bitter resentment of history's memory; the outrage of ambition; the stark realities of racial, religious, and geographic prejudice; and the fear that standing against society's wrongs will demand too high a cost to

pay. At the same time, it is impossible to look at this case and not also see the tender loyalty of Leo's wife; the admiration of his lawyers and friends; and the determination of so many legal minds to overturn his conviction, simply because they could not stand by and witness such injustice. In the end, perhaps the final verdict on this case must be, as Governor John Slaton said, a matter of conscience.

In this day of fading ideals and
disappearing land marks, little Mary Phagan's
heroism is an heirloom, than which there is
nothing more precious among the old red hills
of Georgia.

Sleep, little girl; sleep in your humble
grave but if the angels are good to you in the
realms beyond the trouble sunset and the
clouded stars, they will let you know that
many an aching heart in Georgia beats for you,
and many a tear, from eyes unused to weep,
has paid you a tribute too sacred for words.

—*Mary Phagan's epitaph on her tombstone*
(donated by Tom Watson)

Leo Frank (1884–1915)
Wrongly accused, Falsely convicted,
Wantonly murdered
Pardoned, 1986
Remembered on the 80th yahrzeit, 1995/5755
By the Jewish Community of Cobb County

—*private marker at the site
of Leo Frank's lynching*

MAJOR FIGURES IN THE LEO FRANK CASE

LEO FRANK AND FAMILY

Leo M. Frank: twenty-nine-year-old superintendent of the National Pencil Company; accused of murdering Mary Phagan

Lucille Frank: Leo Frank's wife

Moses Frank: Leo Frank's uncle; owner of the National Pencil Company

Rachel and Rudolph Frank: Leo Frank's parents

Emil and Josephine Selig: Lucille Frank's parents, in whose home Leo and Lucille Frank lived

MARY PHAGAN AND FAMILY

Frannie Coleman: Mary Phagan's mother

John W. Coleman: Mary Phagan's stepfather

Mary Phagan: thirteen-year-old worker at the National Pencil Company; murdered at the factory on April 26, 1913

ATTORNEYS AND OFFICERS OF THE COURT

Henry Alexander: handwriting analyst and defense attorney for Leo Frank

Reuben Arnold: defense attorney for Leo Frank

Paul Donehoo: Fulton County coroner; conducted Mary Phagan's inquest

Hugh Dorsey: Atlanta's solicitor general; prosecuted the case against Leo Frank

Herbert Haas: defense attorney for Leo Frank; corporate attorney for the National Pencil Company

Henry Harris: secretary of the Georgia Board of Health; conducted autopsy of Mary Phagan's body

J. W. Hurt: Fulton County medical examiner; participated in autopsy of Mary Phagan's body

Louis Marshall: attorney and president of the American Jewish Committee; took Leo Frank's case before the Supreme Court

Leonard S. Roan: judge; presided over Leo Frank's murder trial

Luther Z. Rosser: defense attorney for Leo Frank

William Smith: attorney for Jim Conley

INVESTIGATORS

James Litchfield Beavers: Atlanta police chief

John Black: police detective; first to question Leo Frank

Newport Lanford: chief of detectives in Atlanta's police department

W. W. "Boots" Rogers: police officer

Harry Scott: Pinkerton detective

John Starnes: police detective

POLITICIANS

John M. Slaton: governor of Georgia

Tom Watson: Georgia politician; published anti-Semitic magazines and worked against Leo Frank and his supporters

NATIONAL PENCIL COMPANY EMPLOYEES AND ASSOCIATES

Robert Barrett: eighteen-year-old factory worker; discovered evidence in the metal department

Jim Conley: janitor; prosecution's star witness against Leo Frank

Helen Ferguson: sixteen-year-old factory worker and close friend of Mary; testified for the prosecution

Dewey Hewell: sixteen-year-old former employee; testified for the prosecution but later said that she had been threatened and bribed for her testimony

Grace Hicks: seventeen-year-old worker; identified Mary's body

Magnolia Kennedy: fourteen-year-old worker; identified Mary's hair on lathe; testified for the defense

Newt Lee: night watchman; first suspect in the murder

Alonzo Mann: fourteen-year-old office boy

Lemmie Quinn: foreman

Herbert Schiff: assistant superintendent

Monteen Stover: fourteen-year-old worker; testified for the prosecution

OTHER MAJOR WITNESSES

Annie Maud Carter: inmate who received love letters from Jim Conley; testified that Conley confessed to her that he killed Mary

George Epps: fifteen-year-old newsboy; testified that Mary was afraid of Leo Frank

Will Green: carnival worker; claimed to have seen Jim Conley attack Mary

Minola McKnight: cook for the Seligs and Franks; gave police a statement against Leo Frank and then told reporters she had been forced to lie

William Mincey: insurance salesman; claimed Jim Conley told him he had killed a girl on the afternoon of Mary's murder

REPORTERS

Britt Craig: reporter for the *Atlanta Constitution*; accompanied police when they responded to initial report of Mary's murder

Harold Ross: reporter for the *Atlanta Journal*; removed from the police station notes found near Mary's body

TIMELINE

April 26, 1913 Mary Phagan is murdered on Confederate Memorial Day.

April 27, 1913 Mary Phagan's body is discovered. Newt Lee is arrested. Leo Frank is interrogated for the first time.

April 29, 1913 The funeral of Mary Phagan is held. Leo Frank is arrested.

April 30, 1913 Coroner's inquest begins.

May 1, 1913 Police arrest and release Jim Conley.

May 5, 1913 Mary Phagan's body is exhumed for autopsy.

May 7, 1913 Mary Phagan's body is exhumed a second time.

May 8, 1913 The inquest concludes.

May 18, 1913 Police question Jim Conley.

May 23, 1913 The grand jury indicts Leo Frank.

July 28, 1913 The trial of Leo Frank begins.

August 25, 1913 The jury returns a verdict of guilty.

August 26, 1913 Judge Leonard S. Roan sentences Leo Frank to hang for the murder of Mary Phagan.

October 31, 1913 Judge Roan denies a motion for a new trial.

February 17, 1914 Georgia Supreme Court denies a motion for a new trial.

February 24, 1914 Jim Conley is convicted of being an accessory after the fact to Mary Phagan's murder and sentenced to one year on a chain gang.

April 6, 1914 The defense files an extraordinary motion in Fulton County Superior Court and asks for a new trial on the basis of new evidence.

April 16, 1914 The defense files a motion in Fulton County Superior Court to set aside the original guilty verdict.

May 6, 1914 The Fulton County Superior Court denies a request for new trial. The defense appeals to Georgia Supreme Court.

June 6, 1914 The Georgia Supreme Court denies a motion to set aside the verdict. The defense appeals to the Georgia Supreme Court.

October 14, 1914 The Georgia Supreme Court denies appeal on extraordinary motion for a new trial.

November 17, 1914 The Georgia Supreme Court denies appeal to set aside the original guilty verdict.

December 7, 1914 U.S. Supreme Court denies a request for review of November 17 Georgia Supreme Court ruling.

December 9, 1914 Jim Conley is released.

December 17, 1914 The defense applies to the U.S. District Court for a writ of *habeas corpus*.

December 19, 1914 The District Court denies a writ of *habeas corpus*.

December 28, 1914 The U.S. Supreme Court agrees to hear arguments on the issue of due process.

February 23, 1915 Judge Leonard S. Roan dies of cancer.

February 25, 1915 The Supreme Court begins hearing arguments on Leo Frank's appeal.

April 9, 1915 The Supreme Court rejects the appeal.

May 10, 1915 Leo Frank's execution is rescheduled for June 22, 1915.

June 8, 1915 The Georgia Prison Commission denies petition for clemency.

June 20, 1915 Governor John Slaton commutes Frank's sentence to life in prison.

June 22, 1915 Armed mobs attack Governor Slaton's home.

July 17, 1915 Prisoner William Creen slashes Leo Frank's throat at Georgia State Prison Farm. Two prisoners, who are doctors, save Frank's life.

August 16, 1915 A mob of twenty-five armed men breaks into Georgia State Prison Farm and removes Leo Frank.

August 17, 1915 The lynch mob hangs Leo Frank, claiming to be carrying out the jury's verdict.

August 20, 1915 Leo Frank is buried in Brooklyn, New York.

September 2, 1915 The Cobb County grand jury fails to indict anyone for Leo Frank's lynching.

April 23, 1957 Lucille Frank dies in Atlanta.

March 6, 1982 Alonzo Mann signs an affidavit asserting Leo Frank's innocence and Jim Conley's guilt.

January 4, 1983 The Anti-Defamation League applies for a posthumous pardon for Leo Frank.

December 22, 1983 The Georgia Board of Pardons and Paroles denies the pardon.

March 19, 1985 Alonzo Mann dies.

March 11, 1986 The Georgia Board of Pardons and Paroles issues a pardon to Leo Frank, citing the state's failure to protect him while in custody or bring his killers to justice.

January 1, 2000 Atlanta librarian Stephen Goldfarb publishes the names on the Internet of Leo Frank's lynchers.

GLOSSARY OF LEGAL TERMINOLOGY

affidavit: a written declaration made under oath

appeal: an application to a higher court for a ruling or verdict to be reviewed and reversed

attorney-client privilege: a legal concept and the law in most of the United States that keeps all communications between a client and that person's attorney confidential

capital: punishable by death

chain of evidence: also called chain of custody; the careful handling and documentation of the whereabouts of all evidence in an investigation to ensure that evidence is not lost, contaminated, or tampered with

circumstantial evidence: evidence that indicates the possibility of guilt but does not directly prove it

clemency: mercy or leniency extended by a person in authority to a convict

commute: to change a sentence to a less severe one, such as a reduction of a death penalty sentence to life imprisonment

coroner: a government official whose job is to investigate deaths that are not clearly due to natural causes. This investigation takes place by means of an inquest.

counsel: a legal adviser such as an attorney or advice given by such a person

exculpatory evidence: evidence that tends to show that a defendant is not guilty

forensic evidence: evidence that is obtained by the use of scientific methods

grand jury: a group of citizens who are summoned to decide whether a person should be formally charged with a crime (indicted)

indict: to formally charge a person with a crime. An indictment leads to a trial to determine the guilt or innocence of the person charged.

inquest: a legal inquiry, held before a jury and led by a coroner, into a suspicious death

jury: a group of citizens who are summoned to make a decision in a legal proceeding

medical examiner: a physician appointed by the government to conduct autopsies on the bodies of people who have died under suspicious circumstances

motion: a request by an attorney for a judge to take a specific action in a legal proceeding

overrule: to reject, in the role of judge, the request of an attorney in a legal proceeding

overturn: to reverse the verdict of a lower court as the result of a successful appeal

pardon: to release a convicted person from penalty for an offense

solicitor general: a government official who prosecutes cases against accused criminals

subpoena: an official summons to appear as a witness in a legal proceeding

verdict: the decision of a jury regarding a legal matter in a trial, such as the guilt or innocence of a person charged with a crime

FURTHER READING

BOOKS

Carnes, Jim. *Us and Them: A History of Intolerance in America*. New York: Oxford University Press, 1996.
Read fourteen cases studies of intolerance in United States history, from colonial times through the twentieth century.

Cohen, Daniel. *Yellow Journalism: Scandal, Sensationalism, and Gossip in the Media*. Minneapolis: Twenty-First Century Books, 2000.
Learn about the history of yellow journalism in the United States and the effects of sensational media on public opinion.

Diner, Hasia R. *A New Promised Land: A History of Jews in America*. New York: Oxford University Press, 2003.
This book chronicles the history of Jewish life in America.

Dudley, William. *Mass Media*. Farmington Hills, MI: Greenhaven Press, 2005.
From the Opposing Viewpoints series, this book addresses controversial issues about mass media and the opposing sides of the debates.

Levine, Ellen S. *Catch a Tiger by the Toe*. New York: Viking, 2005.
In this historical novel set in the 1950s, a thirteen-year-old girl, whose father is tried as a Communist during the Red Scare, grapples with issues of social justice and civil rights.

Rossel, Seymour. *Let Freedom Ring: A History of the Jews in the United States*. West Orange, NJ: Behrman House, 1995.
Learn more about the history of Judaism and ethnic relations in the United States.

Sharenow, Robert. *My Mother the Cheerleader*. New York: Laura Geringer Books, 2007.
This novel tells a story of a fourteen-year-old girl whose mother pulls her out of her New Orleans school when the school is desegregated in 1960. It explores some of the religious, political, and race issues that existed in New Orleans.

WEBSITES

American Jewish Archives
<http://www.americanjewisharchives.org>
The American Jewish Archives houses historic photos and documents significant to the American Jewish experience. Follow the links to their online exhibit to view part of their collection.

Anti-Defamation League
<http://www.adl.org/>
The Anti-Defamation League website features news articles relating to anti-Semitism and civil rights issues.

Atlanta History Center
<http://www.atlantahistorycenter.com>
For a glimpse at Atlanta's history, explore the Atlanta History Center's photos of their exhibits.

William Breman Jewish Heritage and Holocaust Museum
<http://www.thebreman.org/>
This museum website has more information on the history of the Jewish community in Georgia, including a description of the museum's Leo Frank family document collection.

AUTHOR'S NOTE AND ACKNOWLEDGMENTS

To write a book like *An Unspeakable Crime* is to embark on a journey of research that amounts to a detective's following a trail of convoluted clues. One source leads to another and then backtracks to a third that tells you something more about the first. The journey started simply enough: in 1998 a friend of mine mentioned the Leo Frank case. He assured me that I would be interested because my husband often serves as an expert witness in murder conviction appeals, and I feel as strongly as he does about the problems with our justice system.

Taking my friend's advice, I read Leonard Dinnerstein's book, *The Leo Frank Case* (the most complete reference at the time, as Steve Oney would not publish his comprehensive book, *And the Dead Shall Rise*, until later in my research journey). I found that I could not get the case out of my mind. I listened to the score of *Parade*, and watched *The Murder of Mary Phagan* on cable, astonished that such a travesty of justice could have been allowed to occur.

The case stayed with me, and when I wrote my novel *The Perfect Shot*, I used a school history project about Leo Frank as the catalyst for my main character's change and growth. E-mails from readers told me that the case stayed with them too. It also stayed with my wonderful editor, Shannon Barefield, who has worked with me on many books. She encouraged me to consider writing a nonfiction book about it, and because I felt I still had so many unanswered questions, I agreed wholeheartedly.

I searched for source material and was further astounded that so little accurate published material could be found at that time. Several fictionalized accounts of the case had been published. Mary Phagan Kean (Mary Phagan's great-grandniece) had published a personal and passionate account of the murder from her family's perspective, and Harry Golden had published several accounts of the case from his Jewish perspective. But I couldn't find the answers I sought, and I discovered more complications than solutions. I wondered why quotations from the trial varied so widely, until I discovered that the original trial transcript had mysteriously disappeared from the courthouse. The only sources that survived were incomplete trial citations in the Brief of Evidence that was submitted during the appeals and published pamphlets containing edited versions of individual lawyers' arguments. I was also surprised that nothing about the case was available for teen readers, since it involved so many teenagers.

Material on the Internet can be unreliable, but I discovered the *Georgia Stories: History Online Project*. This was not a website consisting of someone's unvetted opinions but a site that had scans of actual letters and newspaper and magazine articles. Reading these made me realize that original material other than the trial transcript was out there, if I was willing to follow the trail. I lived in southern Indiana at the time, so I started with the newspaper articles, letters, diaries, and photographs in the Jacob Rader Marcus Center of the American Jewish Archives, in the Cincinnati Campus of the Hebrew Union College, Jewish

Institute of Religion. There Dorothy Smith, Vicki Lipski, Elise Nienaber, and Camille Servizzi helped me sort through the archives.

I read crumbling, orangey brown newspaper clippings with ragged edges that looked as if they had been chewed upon by time. Some were so brittle that they had broken along the fold lines. I listened to a taped interview of MacLellan Smith, a newspaperman who had sat in the courtroom during Leo Frank's original trial. I held letters that Leo had written to Lucille when they were first in love and letters written from the prison farm, and I saw how his handwriting changed from the slanted elegance of a confident businessman to the more rounded, penciled scrawl of an imprisoned convict. I looked at photographs of the lynching. I read Lucille's notes about nursing Leo after his throat was slashed and about her horror at his death. And I had to know more.

The Marcus Center collection mentioned materials at Emory University and the Atlanta History Center, and I was already aware of a collection at the Breman Jewish Heritage and Holocaust Museum. These are all located in Atlanta, so I headed there. In the Robert W. Woodruff Library in Atlanta, Kathy Shoemaker was glad to help me and encouraged me to photograph their collection. I read the *Tennessean's* articles about Alonzo Mann's 1982 bombshell, the published version of Hugh Dorsey's closing, newspaper clippings, and the transcripts of Governor Slaton's hearings. My fascination with Governor Slaton led me to his papers, preserved at the Georgia Archives, south of Atlanta in Morrow. Senior Archivist Dale Couch and Military Records Archivist Andy Phrydas were invaluable in bringing me Slaton's correspondence and clippings about his commutation order. I was particularly touched by the letter from Lucille, pleading her husband's case.

In the Ida Pearle and Joseph Cuba Community Archives and Genealogy Center of the William Breman Jewish Heritage Museum, Archivist Sandy Berman enthusiastically shared their collection with me. There I saw many family photographs of Leo and Lucille and held the leaflets that Leo prepared in prison and that Lucille typed for him at home. I saw the interview of Leo's nephew that Sandy had done in 2002. I read the schoolgirl diaries of a Birmingham, Alabama, teenager whose Jewish relatives had fled Atlanta after Governor Slaton's commutation order. Sandy even showed me Leo's desk and a catalog from the National Pencil Company—the collection even had an original pencil from the factory.

The Kenan Research Center, part of the Atlanta History Center, contained more newspaper articles and personal letters. Vice President, Research Services Paul Crater and Reference Manager Beth McLean were very helpful in having material ready for me in advance and in arranging for speedy photocopying. In addition to newspapers, I read letters that Leo and Lucille received from friends, offering sympathy and support and praising their steadfastness. I read loving letters from Lucille to Leo, letters from Leo's parents and letters from Lucille's parents—including the one Lucille's mother wrote to her while she was in Brooklyn for Leo's funeral, telling Lucille that she had Leo's wedding ring but could not

give any particulars. Holding such a letter in my hand felt as if I were holding that ring, myself. To read Leo's and Lucille's writing was to feel as if I had met them and as if I had been entrusted to tell their story, fairly and honestly, as it had not been told in their lives.

I have tried to tell that story as justly and clearly as I could. I am indebted to my insightful critique group: Sandra Brug, Maurene J. Hinds, Kiri Jorgensen, and Linda Knox for their thoughtful reading and detailed comments; to the members of my previous critique groups: Marilyn D. Anderson, Judy Carney, Kristi Collier, Amanda Forsting, Michael Ginsberg, Elaine Hansen, Keiko Kasza, Barbara Larkin, Stuart Lowry, and Elsa Marston for their invaluable feedback on an early version of this book; to Kate Merkling for her critical early reading; and to John Merkling for vetting the manuscript through legal eyes. I'm grateful to Shannon Barefield for urging me to write this book, for patiently spending time in spirited discussions of my manuscript, and for leading me through revisions to make the story as clear and as precise as possible, since so many aspects of it are difficult to understand and express. I also appreciate Andrew Karre's thoughtful guidance through the final editing and launch of this book and his unfailing good humor as he introduced me to Microsoft Word, Facebook, and blogging. As always, my husband, Arthur B. Alphin, supported and encouraged me as I researched and pondered and wrote. He patiently listened to literally years of my analysis of the case and then took the time to read the manuscript and raise questions and offer feedback. I could not have written this book without him.

For me, the true thrill of research comes from doing more than reading books and newspapers. It comes from holding letters handwritten by real people. It comes from talking to archivists who actually knew the families I was writing about: one who was friends with one of Hugh Dorsey's grandsons and another who spent time with Leo's nephew. And it comes from seeing actual places. When I drove to Marietta, I thought I was prepared to see Tom Watson's lavish gravestone for Mary; and in fact, I walked almost instinctively straight to her grave. But I was shattered to see that gravestone crowded with teddy bears, just like any modern teenager's locker or gravesite. Many looked sun-faded, but others were quite recent, signs of grief that has never abated. Then I searched for the intersection that was the site of Leo's lynching and finally found a run-down building marked only by two small plaques that had carefully been positioned too high for easy vandalism.

Research transports me not only to another place but to another time. It brings the people of the past to life again, allowing me to introduce them to you, so that you can come to your own understanding of who they were and of what really happened in Atlanta in 1913.

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